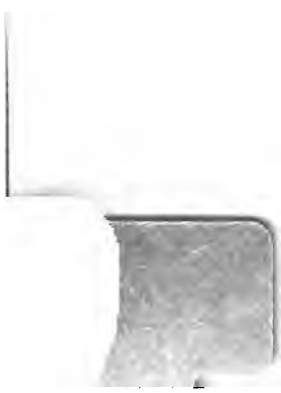

HEARINGS

ON

H. RES. 813

TO INVESTIGATE VIOLATIONS OF THE ANTITRUST ACT OF EIGHTEEN HUNDRED AND NINETY

HEARINGS HELD BEFORE THE COMMITTEE ON RULES, HOUSE OF REPRESENTATIVES UNITED STATES, JANUARY 23, 1911

COMMITTEE ON RULES

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WALTER I. SMITH	CHAMP CLARK
HENRY S. BOUTELL	OSCAR W. UNDERWOOD
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J. SLOAT FASSETT	JOHN J. FITZGERALD

HOWARD N. SHALLENBERGER, *Clerk*

WASHINGTON
GOVERNMENT PRINTING OFFICE
1911

VIOLATIONS OF ANTITRUST ACT OF 1890.

COMMITTEE ON RULES,
HOUSE OF REPRESENTATIVES,
Monday, January 23, 1911.

The committee met at 10 o'clock a. m., Hon. John Dalzell (chairman) presiding.

The committee had under consideration the following resolution:

[H. Res. 813, Sixty-first Congress, second session.]

Resolved, That a committee of nine Members of this House, to be selected, five by the majority and four by the minority, and to be elected by ballot, be, and is hereby, directed to make an investigation for the purpose of ascertaining whether, since the year of 1897, there have occurred violations of the antitrust act of July 2, 1890, the various interstate-commerce acts, and the acts relative to the national banking associations, which violations have not been prosecuted, dealt with, or lawfully disposed of by the executive officers of the Government; and if any such violations are disclosed said committee is directed to report the facts and circumstances to the House, with bills requiring appropriate action to be taken by such executive officers; and said committee shall also report any further legislation which it may consider advisable for reinforcing the acts of Congress aforesaid and more effectually punishing future violations thereof. Said committee is hereby further specially directed to investigate the United States Steel Corporation, its organization and operations, and if in connection therewith violations of law as aforesaid are disclosed to report the same and a bill requiring action to be taken thereon.

Said committee shall inquire whether said steel corporation has had any relations or affiliations tending toward violations of law with the Pennsylvania Steel Co., the Cambria Steel Co., the Lackawanna Steel Co., or any other iron or steel company nominally independent.

Also whether said steel corporation through the persons owning its stock or its directors or officers has or has had relations tending toward or aiding in violations of law with the Pennsylvania Railroad Co., or any other railroad company, or with any national banking companies, trust companies, or insurance companies, or with the stockholders, directors, or other officers of said companies, and whether such relations have caused or have a tendency to cause any of the results following:

First. The restriction or destruction of competition in production or transportation, including conspiracies to crush out and bankrupt competitors.

Second. Excessive capitalization of corporations with large bond and stock issues not representing real values.

Third. Vast combinations of corporations controlled by a few individuals, created by the ownership by one corporation of the stock of other corporations, the securities issued therefor constituting fictitious capitalization.

Fourth. Wide speculations in stocks conducted by conspiracies among associated owners and officers of the various corporations.

Fifth. Private profits through such speculations to managers of the corporations derived at the expense of the stockholders and the public, using corporation money or manipulating corporation power.

Sixth. To cause panics in the bond and stock markets and in the money markets like those of 1903 and 1907.

And to fully report to the House whether by reason of any facts thus ascertained there should be legislation by Congress as contemplated by the first clause of this resolution.

Said committee as a whole or by subcommittee is authorized to sit during sessions of the House and the recess of Congress; to send for persons and papers and to administer oaths to witnesses.

STATEMENT OF HON. AUGUSTUS O. STANLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY.

The CHAIRMAN. How much time do you want, Mr. Stanley?

Mr. STANLEY. Mr. Chairman, I would like to have all the time I can get. I have a great deal of matter that I want to put in the record, and I will just ask the committee to give me as much time as they can.

The CHAIRMAN. We have one other gentleman to be heard this morning, who has not come in yet. You may go ahead.

Mr. STANLEY. You will understand that this is such an immense proposition that it is impossible to discuss it, even cursorily, in the time of a morning session. How long will you sit; from now until 12 o'clock?

The CHAIRMAN. Yes; and we can not give you more than half of that time.

Mr. STANLEY. I will say that I would like to have an hour and as much more as I can get.

The CHAIRMAN. We will give you an hour.

Mr. STANLEY. Very well.

Mr. Chairman and gentlemen of the committee, it will be impossible for me in one hour to touch, even cursorily, on the various subjects embodied in this resolution, and for that reason I shall prefer to discuss a part of it thoroughly rather than to discuss all of it cursorily, or to discuss it as thoroughly as I can in the time. I will, for that reason, confine myself to two propositions. The first is, that the United States Steel Corporation is a combination in restraint of trade, as evidenced by its creation and its charter without any other facts that I would seek to elicit by this resolution, and I hope in future hearings, if you care to hear from me further, or by a brief submitted for the consideration of this committee, to make equally conclusive proof of the existence of all the other illegal practices mentioned in this resolution; and in the second place, to demonstrate to you that the merger of the United States Steel Corporation and the Tennessee Coal & Iron Co. was in open and manifest violation of the law and is now in open and manifest violation of the law. To those two questions alone I will confine what remarks I make this morning.

It strikes me, gentlemen of the committee, that you are called upon to report on this resolution. By its terms the House is asked to name a committee who shall ascertain the facts. You are, as far as this resolution is concerned, an inquisitorial and not a judicial body. You are in the attitude toward the accused of a grand jury. The question will be finally determined upon hearings that are exhaustive, such as you could not, with the many duties devolving upon you, enter into under any circumstances. For that reason it is your duty, as I see it, to report this resolution if you believe there is reasonable ground for believing that this is a combination in restraint of trade. If there is probable cause for believing that it is a combination in restraint of trade, then it is your duty to submit that question to the safest, the ablest, the most conservative of juries, chosen in the most careful way. I can conceive of no defendant, however great his interests or however manifest his innocence, who could ask for a more just or a more imposing tribunal to pass upon his case, or a more capable one, than a jury selected from the House of Representatives by the House of Representatives.

One of the most incriminating facts connected with the formation of the United States Steel Corporation is its overcapitalization. Now, I am perfectly well aware that the Sherman Antitrust Act can not make criminal or can not punish the overcapitalization of a corporation——

Mr. FASSETT. It does not affect it, does it?

Mr. STANLEY (continuing). Whether engaged in interstate-commerce business or not. No, sir; it does not affect it at all.

Mr. FASSETT. No.

Mr. STANLEY. But it is a fact to be considered, because overcapitalization springs from two things, always—one is excessive profits and the other is excessive power. If a concern such as the Carnegie Steel Co. (Ltd.) is making from 40 to 100 per cent there is a tendency of that concern to capitalize its skill, to capitalize its good will, and to capitalize its power to earn money. The price of the stock rises and falls automatically with its earning power, and it is the most natural thing in the world that it should increase its capitalization. When a concern is immensely prosperous, making an enormous profit on a fixed capital, as soon as that fact becomes known, either by virtue of its dividends or by virtue of its excessive capitalization, there is a tendency of capital to gravitate in the direction of that industry invariably; and when the man who is enjoying this immense profit sees capital diverted toward that business he sees the danger of active competition, and it is instinctive for him who is benefited by this peculiarly prosperous business to protect it from that competition. He may protect it by the excellence and the cheapness of his product, or he may protect it by combination in violation of the law. That the United States Steel Corporation was overcapitalized will not be denied. I have here a certified copy of a petition filed in the court of common pleas, in Allegheny County, Pa., in which H. C. Frick is plaintiff and the Carnegie Steel Co. and others are defendants. I will place in the record the style of this suit in full. I will also put in the record a copy of an iron-clad agreement recited here, by the terms of which each one of the members of this corporation agrees that in the event of friction he will accept on certain conditions the book values of his stock.

Mr. FASSETT. What is the date of that?

Mr. STANLEY. This is No. 422, at the March term, 1900. (Exhibit A.)

(All the papers submitted by Mr. Stanley for the record will be found, in the order in which they were submitted by him, appended to this hearing.)

Mr. STANLEY. Mr. Frick was notified that he would be paid the book value of his stock under the terms of this agreement. This petition is sworn to by a great number of the parties to it. It is a very elaborate affair. It is sworn to by Andrew Carnegie, by Henry Phipps, jr., John Walker, H. M. Curry, William L. Abbott, H. W. Borntraeger, S. E. Moore, and W. H. Singer. This was but a short time, now, you understand, before the formation of the United States Steel Corporation. In this petition they make this formal averment (Exhibit B):

Having so answered, we do respectfully suggest that any such estimate of values of our assets as is contained in the ninth paragraph of the plaintiff's bill is wholly immaterial, as we are advised, in the present case. The rights of

the plaintiff touching the price which is to be paid to him for his interest are based altogether upon the "ironclad agreement" to which he is a party. The value of his interest is by the terms of said agreement to be ascertained by reference to the books of the company. Those books were under the supervision of the plaintiff until the day of his resignation from the chairmanship of our company, and the entries have been made from time to time in accordance with his express judgment.

These books show that the net value on the 31st day of December, 1899, of the assets of the association was $75,610,104.06. To a large extent this book value represents the actual cost of the properties represented in the balance sheets of the association.

That concern was shortly afterward sold to the United States Steel Corporation for five hundred and twenty millions of dollars.

Mr. FASSETT. Do you introduce any figures showing their earnings?

Mr. STANLEY. No, sir; but I admit that the earnings of the Carnegie Steel Corporation were 40 per cent or over. One year, I believe, they reached 100 per cent. But the gentleman from New York will understand that I am not railing against the Carnegie Steel Co. I think it was one of the greatest, most expert, most wonderful business organizations in the world, and I wish, devoutly wish, that Andrew Carnegie and the other ironmasters, and stock promoters and stock gamblers, were in control of the steel industry to-day. I am as much grieved at the prospects of losing our primacy in the steel industry as I am as to the effect upon the ultimate consumer. I do not even claim that those profits were not honestly made. I am making no allegation one way or the other about that; nor am I claiming that the overcapitalization was illegal. But I do say that the effect of this overcapitalization was to force the overcapitalized concern into a combination in restraint of trade, as I will show you further on. Now, these immense profits were made between 1897 and 1901 in the steel industry, and I file here a table from the Iron Age showing the profits between 1897 and 1901 of the various steel industries. I file a table showing the production and prices of Bessemer steel rails in the United States from 1897 to 1899, showing a sudden increase of price from $18.75 per ton up to $28 per ton. (Exhibit C.)

I file also a table showing prices of beams and channels, showing a like increase. (Exhibit D.) I will not tire the patience of the committee with these recitations except to say that they show an increase in some instances of 100 per cent.

I will now file with the committee a statement showing that at the time that many of these inordinate prices were obtained these various steel companies which made them were a constellation of conspiracies in restraint of trade. Each particular star was itself combined of manufacturing companies. If you will examine the Addystone pipe case you will see the modus operandi of each one of these concerns. Finding the business profitable, the appetite grew with what it fed on, and the makers of pipe and tubes, the makers of wire and nails, the makers of rails, the makers of plate, went in—the steel industry was divided into types, and the maker of each particular character of steel went into combination—with other manufacturers, and these inordinate profits followed automatically (Exhibit E), with the result, of course, that some of them determined not only to fleece the public, but to take the swag from their neighbors.

Mr. FASSETT. Do you show that the prices of the products increased to the people?

Mr. STANLEY. Yes; I show that from authorities that I do not think will be questioned. (Exhibit F.) Then these various companies increased until of these nine companies, the Carnegie Steel Co. heading the list, the Federal Steel Co. was composed of 3 plants, the American Steel & Wire Co. were composed of 45 plants, the National Tube Co. of 30 concerns, the American Bridge Co. of 30 plants, the National Steel Co. of 10 different plants, the American Steel Hoop Co. of 15 plants, the American Tin Plate Co. of 40 plants, and the American Sheet Steel Co. of 27 concerns. All of these concerns had an actual value of $241,000,000. They were capitalized at $626,000,000, and they went into the United States Steel Corporation with a capitalization of $1,113,000,000. (Exhibit G.)

Mr. FASSETT. When you say "actual value," what do you mean?

Mr. STANLEY. The actual cost of their plants and the fair valuation of their ores. Now, all of these different concerns were getting along very happily. Each fellow was making enormous profits; each fellow had absolute control of the business. You will find that the Tin Plate Co., and the Wire & Nail Co., and later half a dozen of these people, owned from 80 to 95 or 98 per cent of the industry. It was a complete monopoly within itself, and if these various giant concerns could each have moved in its own particular sphere, they would have gone on in this way, unless the Addyston Pipe case and like decisions had stopped them. But Carnegie determined to invade the field of his neighbors, he being the iron master, greater in wealth, greater in strength. He built the greatest industrial fortune in the history of the world. He came nearer being the result of his own energy and his own talent; and he was ambitious, as he was gifted and strong; and I have nothing to say against him. No fair man can help but admire many things in this prince of the industrial world. Of course there are other things about him that I do not admire, but that is neither here nor there. Carnegie determined to invade the field of his neighbors. He threatened to build a line to the seaboard, and then the Pennsylvania Railroad had chills and fever. He threatened to go into the tube business and the wire and nail business and to build different smelting factories, and there was hurrying to and fro, there was panic in the steel business; and I have not time to recount it now, but I will incorporate in the record the graphic account given by Mr. Bridges (Exhibit H) in his inside history of the United States Steel Corporation of the fear, the terror, the dismay with which Carnegie filled the industrial world when he made this threat. There was but one of two things to do. One was to meet the fierce competition threatened by Andrew Carnegie, and the other one was to pay him for immunity, to buy from the one man that threatened competition the power to plunder. Says Mr. Bridges, they fled to Morgan, and his fertile genius evolved the plan which in form was the charter of the United States Steel Corporation.

In addition to that, I noticed in the New York Tribune of January 15, 1911, a signed article by Mr. George W. Smalley, whom I need not introduce to any of you, in which he says that he now holds an interview signed by Mr. Carnegie himself—a statement signed, and his interview O. K.'d by Carnegie—in which Carnegie said that 11 days before the United States Steel Corporation was formed he sold to Morgan, and that the contract was oral between the men. Per-

haps there are no two men in the world to-day who would make an oral contract involving a billion of dollars except J. Pierpont Morgan and Andrew Carnegie. "These spirits, each courageous, daring, confident, entered," says Smalley, "into an oral contract," and the signatures of these nine concurrent concerns and the elaborate machinery of the law were but pawns on the chessboard in the hands of these Titanic masters of American finance. I offer that article. (Exhibit I.)

I will incorporate in the record some statements from Prof. Berglund, who is the apologist, I believe, for the United States Steel Corporation in a great way, and who has written an accurate and certainly dispassionate history of this concern, going into detail as to these prices, and showing that at the time these conspiracies were entered into prices rose in the United States and did not rise anywhere else in the world, and giving authentic figures for it. (Exhibit J.) Here is a statement that I have overlooked. I will not take time to read this, because it is long, but Prof. Berglund shows that with the absorption of this concern, the formation of these subsidiary companies and subsequent formation of the United States Steel Corporation, the prices immediately inordinately increased in the United States over and above what they were, showing that it was due to the operations of the United States Steel Corporation—I will not call it a trust; I will leave that to be determined by Congress and the courts.

Now, gentlemen, I have shown you that this concern was overcapitalized, and I have shown you its effect upon prices. The overcapitalization, if you will make an analysis, forced this combination. They must now pay a dividend upon this enormous amount of fictitious securities.

The CHAIRMAN. Mr. Stanley, will you let me interrupt you a moment?

Mr. STANLEY. Certainly, Mr. Dalzell.

The CHAIRMAN. What would a committee find, outside of what you have already got and are presenting before this committee now, in the way of facts?

Mr. STANLEY. I wish I knew. I have found everything I can. I think, when I get through with the facts, the committee will find that the facts are sufficient. I do not think that the purpose of this committee is to find facts, exactly; it is to find from facts presented that there is a combination in restraint of trade, or reasonable ground to believe that there is a combination in restraint of trade.

The CHAIRMAN. Do you not think what you are now presenting to this committee ought properly to be presented to the Attorney General?

Mr. STANLEY. I have, Mr. Chairman; I have been presenting things to the Attorney General for, lo, these many years; and I speak deferentially of the Attorney General. I think that the best way to give these facts to the Attorney General is in some tangible and public form, so that they can not escape a memory that is not retentive, although he is a great lawyer; and, to show you how grand, gloomy, and peculiar they are over there, I proposed to the Judiciary Committee that the Attorney General be requested to furnish us with such facts as he had in his possession with reference to this concern, and he answers and he says, "Several statements and com-

munications have been made to this department at various times, and data of various kinds have been furnished to or procured by the Department, concerning the matters covered by the quoted resolutions. Such statements and communications, however, are essentially confidential, even when not so expressly declared," and so on. I will not go into the whole business, but I will put this response into the record (Exhibit K). I have furnished data enough to the Department of Justice and to the country to fill a flour barrel, showing that the American Tobacco Co. absolutely confiscated the raw material; and yet when that case was tried Judge Noyes, I believe, rendered the decision, and you will find his decision (Exhibit L) in Senate Report No. 1110, Part 2, Sixtieth Congress, second session, on page 21; you will find there the decisions of the various judges in that case, among them Judge Lacombe said:

> During the existence of the American Tobacco Co. new enterprises have been started—some with small capital—in competition with it and have thriven. The price of leaf tobacco—the raw material—except for one brief period of abnormal conditions, has steadily increased until it has nearly doubled, while at the same time 150,000 additional acres have been devoted to tobacco crops, and the consumption of the leaf has greatly increased. Through the enterprise of defendant and at large expense new markets for American tobacco have been opened or developed in India, China, and elsewhere.

I will incorporate all the court says on this subject in the record.

Now, I will also incorporate this statement in your record, showing what the facts are that he overlooked. The fact is that in Kentucky alone there were 100,000 acres—150,000,000 pounds of tobacco—cut out in a single year by agreement of the farmers. The Agricultural Year Book shows that the production went down from a billion acres to something over 800,000,000 acres. The Chief Justice turned to Mr. Nichol, when he literally crucified the Attorney General on his facts, and said in effect: "Is it possible that there is nothing in this record to show that the producer of tobacco has been hurt?" And Mr. Nichol said, "Nothing, sir. The record is innocent of any such charge and any such imputation;" and the records of the lower court bear him out, and the Attorney General admitted it; and yet it is true, and the honorable chairman of this committee will recall it, that man after man appeared before you and gave you the names of individuals who had sworn that they were in the employ of the American Tobacco Co. and were put over particular areas, and in those areas they were supreme. No man was allowed to enter there, and they were not allowed to go out of it.

The testimony of tobacco buyers, who to-day are fighting the tobacco organization, ruined brokers, bankrupt brokers—in our country we would consider them millionaires, men who had been worth hundreds of thousands of dollars—who were ground to powder, has been given before the Ways and Means Committee, and they said within 90 days after this—this conspiracy against the grower was perfected—tobacco in the natural leaf fell from 7 cents to a little over 3 cents per pound throughout the whole area where this condition prevailed. After I had asked the Attorney General the questions, after the chairman of the Judiciary Committee on the floor of the House had authorized me to say, as I did say, if I would not press that resolution, for fear of imperiling the impending ——— from the Department of Justice, that they would indict them, and as they

did indict them, yet the Attorney General has never heard that the American Tobacco Co. affected to the value of 1 cent the price of tobacco in the hands of the consumer. I think, in view of the fact that, while the Attorney General is a great lawyer, he seems to be woefully deficient as a detective, we should furnish him with facts on which there can be no question as to the acts and doings of the United States Steel Corporation, whether those acts and doings are legal or illegal.

Mr. LAWRENCE. Do I understand, Mr. Stanley, that the facts you are presenting to us to-day with reference to the United States Steel Corporation you have formally presented to the present Attorney General?

Mr. STANLEY. No, sir; I presented a resolution to the Judiciary Committee asking the present Attorney General to advise Congress as to what facts he had in his possession, and he advised me he would not do it.

Now, as a proposition of law, Mr. Chairman, I believe there is absolutely no question that the form of a combination, whether it be by incorporation, whether it be by contract, whether it be by oral agreement, or what, if under any guise discovered by the ingenuity of man, and men set in motion a force which shall operate as a restraint of interstate trade and commerce or international trade and commerce, that act is illegal. The intent of the corporators or the actors is the gravamen of the offense; or if it can be shown that, however innocent the charter or by-laws may be in their external appearance, they are used as a weapon for the destruction of interstate trade and commerce, they are illegal. That question was settled in the Northern Securities case, and I wish to call the attention of this committee—and I will not take long reading these law books, because they are tedious—to the lucid and powerful language of Judge Harlan:

> Those who were stockholders of the Great Northern and Northern Pacific and became stockholders in the holding company are now interested in preventing all competition between the two lines, and as owners of stock or certificates of stock in the holding company they will see to it that no competition is tolerated.

Just as, of course, these nine companies would see to it that no competition was tolerated between themselves after they were merged in the United States Steel Corporation:

> They will take care that no persons are chosen directors of the holding company who will permit competition between the constituent companies. The result of the combination is that all the earnings of the constituent companies make a common fund in the hands of the Northern Securities Company to be distributed, not upon the basis of the earnings of the respective constituent companies, each acting exclusively in its own interest, but upon the basis of the certificates of stock issued by the holding company.

Now listen, gentlemen:

> No scheme or device could more certainly come within the words of the act—"combination in the form of a trust or otherwise * * * in restraint of commerce among the several States, or with foreign nations"—or could more effectively and certainly suppress free competition between the constituent companies. This combination is, within the meaning of the act, a "trust"; but if not, it is a combination in restraint of interstate and international commerce; and that is enough to bring it under the condemnation of the act. The mere existence of such a combination and the power acquired by the holding company as its trustee constitute a menace to and a restraint upon that freedom of commerce which Congress intended to recognize and protect, and which the public is entitled to have protected.

I will also ask you to have incorporated the following extract from this opinion, beginning on page 346:

The affirmance of the judgment below will only mean that no combination, however powerful, is stronger than the law or will be permitted to avail itself of the pretext that to prevent it doing that which if done would defeat a legal enactment of Congress is to attack the reserved rights of the States. It would mean that the Government which represents all can, when acting within the limits of its powers, compel obedience to its authority. It would mean that no device in evasion of its provisions, however, skillfully such device may have been contrived, and no combination, by whomsoever formed, is beyond the reach of the supreme law of the land, if such device or combination by its operation directly restrains commerce among the States or with foreign nations in violation of the act of Congress.

I will here incorporate in these hearings the charter of the Northern Security Co., and also the charter of the United States Steel Corporation, showing you how closely they resemble each other in their character and effetc.

Now, gentlemen, it has been suggested by the Attorney General—and perhaps that suggestion has occurred to you; I know it did to me—that with the American Tobacco Co. case pending, and with the Standard Oil case pending, this case could better be decided after the law was settled; but this case is not on all fours with either the Standard Oil case or the Tobacco case. It is on all fours with the Northern Securities case. It is sustained by the Addyston Pipe case, by the Northern Securities case, by the case of Swift against the United States, and by quite a number of decisions which I will not read; but I quote Senators Kittredge, Overman, Rayner, and Culberson as authority for the statement that these cases sustain my contention that the United States Steel Corporation is a corporation in restraint of trade. Let us see. If I understand it, the gist of the decision in the Northern Securities case was this, that if a corporation is formed which shall absorb the stock of constituent corporations and issue in lieu thereof its own stock, and the purpose of that performance is to prevent competition, it is a combination in restraint of trade. There it is, in a nutshell. That is exactly what was done in the case of the United States Steel Corporation. Why, it is difficult, it is a question of fact, to determine whether the Standard Oil Co. is a combination in restraint of trade. As long and as hard as I have tried to bring the American Tobacco Co. to task, I am free to admit that there is involved a question of fact which must be settled before we can determine whether the American Tobacco Co. is a combination in restraint of trade or not and for this reason.

These concerns were formed prior to the passage of the Sherman Antitrust Act. They were formed when a half a dozen competing concerns might possibly—for the sake of argument I will say "might," or I will say for the sake of argument, "could"—form themselves into one single corporate entity, even though the manifest purpose of that corporation was to prevent competition. Both of these concerns were formed before the enactment of the Sherman Antitrust Act, and in order to reach them it must have an ex post facto operation. More than that, the Standard Oil started out as a perfectly legitimate partnership. The American Tobacco Co. started out and entered upon its career as a maker of cigarettes, a half a dozen fellows, Kimball and Allen and Ginter and Duke and the others, there were five of them, went to making cigarettes, and nobody paid

much attention to the business, and it grew and grew, and every time they took in a competitor they paid him cash; there was no exchange of stock until the thing became enormous; and if you have followed, as many of you did, the argument before the Supreme Court of the United States, they continually said that the loss of competition was the effect, was an incident, of the legitimate and normal growth of this concern, which must spread, and that it was better that they should buy the business of some man who was not conducting his business as profitably as they than that they should construct new factories. Now, the Supreme Court of the United States will probably be called upon to decide this fact: Was the absorption of these various competing companies the result of an honest effort to increase sales without regard to competition, or was it a cunningly devised scheme in restraint of trade? Was one great concern trying to spread legitimately, or were twenty different concerns trying to fleece the public? That is the question of fact involved in both the Standard Oil and American Tobacco Co. cases. There is no such question here. Their intent was plain as the light of day, manifest as the sun at this hour. What was the great concern? The Carnegie Steel Co. If the Carnegie Steel Co. had, seriatim, bought out these concerns there might have been some question of fact; but the mighty, the all-powerful competitor retired with his swag and nine different concerns entered into a combination.

One of two things was the purpose of this combination—either that one of them might legitimately extend his business and for that reason he purchased the plant of his neighbor, or that each might keep his respective status and prevent any neighbor from entering the narrow industrial circle of its former competitor. Now, will you tell me how nine different concerns can contemporaneously buy out each other for the purpose of having each of them legitimately expand? They absorbed each other; they put their stock into a common pot, just as the Great Northern Railroad and the Northern Pacific Railroad put their stock into a common fund, and out of this clearing house they received in return the stocks of the parent corporation. Mr. Albert H. Walker, the author of a very interesting little work that I presume some of you have read, a most elaborate and carefully digested history of the Sherman Antitrust Act, has written a most interesting letter to the President of the United States, dated January 7, 1910, in which Mr. Walker—and he is a pretty reliable authority—advises the President of the United States that the fact that the United States Steel Corporation is a combination in restraint of trade is not questioned by the lawyers of New York. My amazement increases that a great lawyer—and the Attorney General is a great lawyer, if I am any judge, and I have listened to him, gentleman, for hours—should have imperiled his case by attacking any other corporation than the Steel Corporation, because if the United States Steel Corporation is not a combination in restraint of trade, it follows, a priori, that the American Tobacco Co. and that the Standard Oil Co. are innocent. As I have explained to you, it is a technical question of law, and there is a question of fact—and the question of fact is always uncertain—as to the guilt of these people. In my mind there is no doubt about it, but to others there might be. But you can try the United States Steel Corporation, as you did the Northern Securities case, on their charter and by-laws,

on the manifest intent as expressed by the corporators, and the only hope of their escaping is that the Supreme Court of the United States will reverse its solemn finding in the Northern Securities case and the Addystone Pipe case, which was decided by Justices Peckham, Lurton, and Taft, the decision rendered by Judge Taft, and the decision unanimously approved by the Supreme Court of the United States.

The saddest part, one of the most unfortunate things, about this concern, is that the steel industry was builded up by men who never bought a bond nor a share of stock, by men who understood how more cheaply and more bravely to go down into the earth and dig up the mother ore and convert it to the uses of man than any other men that ever conducted the business. We will never, in my opinion, compete with the men expert in the handling of their fingers. You will find anæmics in Great Britain, whose greatgrandmothers spun wool, who can pick out a thread of wool more expertly than we can. We will never touch the vines, the fruits, where cheaper labor exerting its skill only is the deciding factor. We must use that labor by exchanging for it something that we produce by a different kind of labor. But wherever patience, courage, capacity for physical endurance, indifference to physical danger, the handling of ponderous machinery, indifference to arduous labor, are the controlling factors, the American is dominant in peace as he is in war, and those are the things that are required in the steel industry, and those are the things that Andrew Carnegie, canny Scotchman that he was, utilized. Now the steel industry has passed from the men expert in the technique of their business to those learned only in the dubious arts by which the law is violated and the public is exploited. As proof of that, I file as an exhibit the names of the men who are in charge of the steel industry now.

Now, I wish to file here the views of Prof. Wilgus, not in the attitude of a professor of law in Harvard University, not at all in the attitude of an attorney on either side, but unprejudiced, engaged in the study of this matter, essentially conservative, he having spent years in composing a most elaborate history of the United States Steel Corporation. He says in that history, before any of these questions ever arose in the forum of public opinion, that there is no doubt that it is a combination in restraint of trade. I incorporate in the record the elaborate argument of Prof. Wilgus.

Gentlemen, this is not the first time that this question has been discussed. I come now to the second phase of it. So far, and I am sorry that my time is coming so rapidly to an end, I have not discussed the merger of the United States Steel Corporation and the Tennessee Coal and Iron Co. I have taken it up purely as a question of law, that the facts surrounding its incorporation and the purposes which animated its incorporators, the close resemblance generically between this charter and the charter of the Northern Securities Co., establish to me, establish to the mind of almost every impartial student who has investigated it, that it was a combination in restraint of trade, essentially. If it were not, it should be investigated, as the result of the merger of the United States Steel Corporation and the Tennessee Coal & Iron corporation. I know of nothing that the future historian will recount with more sadness, and yet with a commiserating smile, than that solemn and farcical march to the

White House, in November, 1909, of Mr. Gary and Mr. Frick, who advised our then trusting Chief Magistrate that they did not want the Tennessee Coal & Iron Co., that they forbore to touch it, that suspicious or cruel men might say that they thought about forming a monopoly; but that there was a great panic impending, and that unless they absorbed, "benevolently assimilated," the Tennessee Coal & Iron Co., a financial cataclysm awaited us. I am not questioning the word of the President of the United States—for so far I have escaped membership in that immortal club, and I have no desire to be initiated to-day—and I have no doubt that Mr. Frick and Mr. Gary made these statements. Gentlemen, if they made those statements, which I will incorporate, whether or not those statements are true—I shall measure my words very carefully, and I will say that I am prone to think that those gentlemen knew that they were not true.

Mr. FASSETT. Must not that necessarily be a matter of opinion?

Mr. STANLEY. Yes; and I do not think there is anything in my statement here to-day that is in the nature of railing or abuse, and I will tell you why, because I will incorporate in this record the statements of those gentleman made on former occasions which are directly in conflict, as found in the reports of the industrial commission. In addition to that, such eminent authorities as Senators Kittredge, Overman, Rayner, and Culberson, in document No. 1064, have not only said that they were not true, but that these gentlemen knew that they were not true, and if they made these statements—and I am not saying that they made them, I am only saying that President Roosevelt said that they made them; there may be a distinction, I do not know; but if the President said that they made them, then these gentlemen in this document say that they were not true—they say that they knew or ought to have known that they were not correct.

The CHAIRMAN. You have named that document now, as you did a while ago, simply by number; you do not tell us what document it is.

Mr. STANLEY. This is Calendar No. 1064, a Senate document, Report 1110, part 2, Sixtieth Congress, second session; Investigation of the Absorption of the Tennessee Coal & Iron Co. It is a very elaborate document.

Now, in that statement they argue that they told him that these securities were held—the Tennessee Coal & Iron Co.'s securities were held—by a large number of banks. They investigated that question and they found that there were no banks that held these securities to amount to anything; that Moore & Schley were the factors for this concern, and they had borrowed four or five million dollars on them; that this company, the men who were at the head of it, the men who had assisted in organizing it, came before a committee of the Senate and said that they were literally sandbagged into submission, that they were hammered to death on the street; that they were threatened with ruin and bankruptcy; that every obligation that they had automatically became due, and that by the methods so well known, the most prosperous concern in the United States was brought to its knees and literally plundered. I will incorporate here the statements of men who were directors in that company. Why, the truth is that under the Bessemer process the ores of this concern were less formidable competitors because they contained phosphorus, and that the perfection of the open-hearth process

enabled the Tennessee Coal & Iron Co. to make steel rails better and cheaper than anyone else. Harriman gave them an order for 100,000 tons, and the Southern Pacific gave them an order for 100,000 tons; and I will incorporate statements from the annual reports of this company showing that the year before it was absorbed it increased its sum for development from one to six millions of dollars. I will show from documents which you can not and will not question that at the time the Tennessee Coal & Iron Co. was bought for forty millions of dollars, if the statements and estimates of Frick and Schwab are to be relied upon—and I will put those in the record—this concern was worth ten times that much money. They had seven hundred millions of tons of steel or iron ore. They had billions of tons of coal.

Mr. Frick and Mr. Schwab both testified before the Industrial Commission that they could not make steel as cheaply as they did in Germany by $4 a ton, if I remember correctly, or as cheaply as they could make it in England, but that it could not be made any more cheaply anywhere in the world than at Birmingham. With the Tennessee Coal & Iron Co., then, with its coal and iron and limestone, to all of which it had fee simple titles, with its properties under rapid development at a cost of $6,000,000 a year, and taking orders from their former patrons for 100,000 tons at a time, the United States Steel Corporation determined that it was necessary to grasp the Tennessee Coal & Iron Co. to retain the monopoly it had purchased at the cost of a billion of dollars. This merger was investigated, and I wish to file the statements here of Senator Bacon and of Senator Knute Nelson, who will hardly be regarded as a prejudiced witness, and of Senators Kittredge, Overman, Rayner, and Culberson, to the effect that this merger was in contravention of existing law and absolutely and palpably illegal.

I have been asked why I did not take these matters before the Department of Justice. Because the Attorney General, says Mr. Gary, has already given him a clean bill of health; and I will incorporate in the record an editorial from the Philadelphia Record of March 28, 1910, quoting an interview with Judge Gary, in which he says that he has been investigated and been declared not guilty, although, if he has, it is a matter undiscovered by the country and unknown to all parties other than Judge Gary and the Attorney General. Judge Gary threatens to do divers and various terrible things to the United States if he is touched. If the Attorney General has already absolved him and if he practically defies the United States to touch him, then, as men of courage as well as of patriotism, we should act.

The CHAIRMAN. Your time is up. You can put anything you want to into the record.

Mr. STANLEY. All right. I will incorporate a statement here showing the effect of the open-hearth process on the steel industry and its effect on the United States Steel Corporation and the Tennessee Coal & Iron Co. I will also show the price of the iron ore—and this is very important, and then I am through, Mr. Chairman—to the United States Steel Corporation. You remember they leased their ores and paid an enormous price for them. Now, taking those ores at the price they paid for them, just take your pencil

and paper and figure the value of the ores they got from the Tennessee Coal & Iron Co. and you will see the immense value of this concern to this company.

Mr. CLARK. How do you know how much iron ore and coal they had down there? You say there were millions of tons of iron ore and billions of tons of coal.

Mr. STANLEY. I have incorporated here the exact amounts.

Mr. CLARK. All right.

Mr. STANLEY. I have here, to the ton, the official statements from the Tennessee Coal & Iron Co. Mr. Clark, my time was limited to an hour, and I have really just called attention to exhibits, in the course of a running argument.

Mr. FASSETT. I suppose those estimates were the estimates of the companies themselves?

Mr. STANLEY. Yes; and the estimates of others.

Mr. FASSETT. The ore deposits as developed here and there?

Mr. STANLEY. They can tell by the use of a diamond drill and by ascertaining the dip and strike of a vein about how much there is there.

Mr. FASSETT. I did not know how you arrived at your estimates, whether from newspaper articles or official documents.

Mr. STANLEY. These are all official reports as to the Tennessee Coal & Iron Co. As to the amount of ore and as to the amount of coal I collected the figures both from the official reports of the Tennessee Coal & Iron Co. and from the published official reports of the United States Steel Corporation.

(At 11 o'clock a. m. the committee adjourned.)

EXHIBIT A.

[In the Court of Common Pleas No. 1 of Allegheny County, Pa. In equity, No. 422. March term, 1900.]

H. C. Frick, plaintiff, *v.* The Carnegie Steel Company (Limited), Andrew Carnegie, Henry Phipps, jr., L. C. Phipps, George Lauder, C. M. Schwab, H. M. Curry, W. H. Singer, A. R. Peacock, F. T. F. Lovejoy, Thomas Morrison, George H. Wightman, D. M. Clemson, James Gayley, A. M. Morehead, Charles L. Taylor, A. R. Whitney, W. W. Blackburn, John C. Fleming, J. Ogden Hoffman, Millard Hunsiker, George E. McCague, James Scott, H. P. Bope, W. E. Corey, Joseph E. Schwab, L. T. Brown, D. G. Kerr, H. J. Lindsay, E. F. Wood, H. E. Tener, jr., George Megrew, G. D. Packer, W. B. Dickson, A. C. Case, John McLeod, Charles W. Baker, A. R. Hunt, A. C. Dinkey, P. T. Berg, Charles McCreery, F. T. F. Lovejoy, trustee for the Carnegie Steel Company (Limited), defendants.

IRON-CLAD CONTRACT.

This agreement, made this tenth day of January A. D. 1887, between Carnegie Brothers and Company (Limited), partly of the first part, and Andrew Carnegie, John Walker, Samuel E. Moore, Henry Phipps, jr., H. M. Curry, William H. Singer, George Lauder, William L. Abbott, David A. Stewart, H. W. Borntraeger, parties of the second part, witnesseth:

1. That the parties of the second part, each acting for himself only and not for another, and in consideration of the sum of one dollar to each of us in hand paid by the party of the first part, the receipt whereof, by the signing hereof, is hereby acknowledged, and for other good and valuable considerations, to each of us moving, do hereby covenant, promise, and agree, to and with the party of the first part, that they, the several parties of the second part, each acting for himself, will at any time hereafter when three-fourths in number of the

persons holding interests in said first party, and three-fourths in value of said interests shall request us, or either of us, so to do, sell, assign, and transfer to said first party, all of each of our interests in the limited partnership of the Carnegie Brothers and Company (Limited). The interest shall be assigned freed from all liens and incumbrances or contracts of any kind, and this transfer shall at once terminate all our interests in and connection with said Carnegie Brothers and Company (Limited).

2. The request of the requisite number and value shall be evidenced by a writing signed by them or their proper agents or attorneys in fact, and a copy of this shall be either served upon the party whose interest it is proposed to buy, or mailed to him at his post-office address, at least five (5) days before the day fixed in said request to make said transfer and assignment.

3. The party of the first part covenants and agrees that it will pay unto the party so selling and assigning the value of the interest so assigned, as it shall appear to be on the books of said Carnegie Brothers and Company (Limited), on the first day of month following said assignment.

Said payment shall be in matter as follows:

If the interest assigned shall not exceed two (2) per centum of the capital stock at par, the same shall be paid for as follows:

One-fourth cash within ninety (90) days of the date of the assignment and the balance in two equal annual payments from the date of the assignment, to be evidenced by the notes of said first party.

If the interest assigned shall exceed two (2) per centum, but shall not exceed four (4) per centum of the capital stock at par, then the same shall be paid as follows: One-fourth cash in six months after the date of the assignment and the balance in three equal annual payments from the date of the assignment, to be evidenced by the notes of the said first party.

If the interest assigned shall exceed four (4) per centum, but shall not exceed twenty (20) per centum of the capital stock at par, then the same shall be paid as follows: One-fourth cash within six months after the date of the assignment and the balance in five equal annual payments from the date of the assignment, to be evidenced by the notes of said first party.

If the interest assigned shall exceed twenty per centum, and not exceed forty per centum of the capital stock at par, then the same shall be paid for as follows: One-fourth cash within eight months after the date of the assignment, and the balance in ten equal annual payments from the date of the assignment, to be evidenced by the notes of the said first party.

If the interest assigned shall exceed forty per centum of the capital stock at par, then the same shall be paid for as follows: One-fourth cash within twelve months after the date of the assignment and the balance in fifteen (15) equal annual payments from the date of the assignment, to be evidenced by the notes of the said first party.

All deferred payments shall bear interest at six per cent (6%) per annum, payable semiannually.

4. This agreement, and the option each of the parties of the second part hereby give to the first party, is hereby declared to be irrevocable, and that it may be carried out in good faith, and notwithstanding any efforts on the part of any of the second parties to evade it, each of the second parties do hereby appoint the person who, at the time when he is called upon to act, is chairman of the first party, our attorney in fact for us and in our names, places, and stead, to assign and transfer our said interests in said Carnegie Brothers and Company (Limited) whenever, under this agreement, it would be the duty of any one of us so to do. This appointment is also irrevocable, is coupled with the interest each of us have in said Carnegie Brothers and Company (Limited), and will justify and warrant our said attorney in fact to act for us, or either of us, in the premises, just as efficaciously after the death of any of us, or after any of us has attempted to revoke this power of attorney or evade this agreement, as if we were alive and living up to it in entire good faith.

5. Death shall not revoke, alter, or impair any of the terms of this contract, but the first party shall after the death of either of the second parties have the following time to elect to buy his interest on the terms hereinbefore set out:

If the interest does not exceed four (4) per cent, four (4) months.

If the interest exceeds four (4) per cent, but does not exceed twenty (20) per cent, eight (8) months.

If the interest exceeds twenty (20) per cent, twelve (12) months.

And we, each of us, who sign this agreement hereby direct our personal representatives after our death to approve, join in, and perfect any transfer our said attorney in fact may make, and our said executor or executors, or administrator or administrators shall carry out this contract and all its provisions, just as if said representatives had themselves made this agreement.

6. This agreement is hereby declared to be alien and encumbrance upon each of our shares in said Carnegie Brothers and Company (Limited), no attempt of any of the second parties, voluntarily, to sell, pledge, or mortgage, and no proceedings adversely against any of the second parties, by execution, process of law, or equity of any kind, bankruptcy, or insolvency, shall, in any way, shape, or form, affect, impair, or alter it, or any part of it, or take from under its operation our respective interests, or relieve any of those interests from the clog hereof.

All parties hereto agree and declare that it is the settled policy of Carnegie Brothers and Company (Limited), and all of us, in entire good faith and with all effort on our part to carry out, in its true spirit and meaning, this agreement, we, all of us, being satisfied that if we do so it will be greatly to the benefit of Carnegie Brothers and Company (Limited), and that any effort on the part of either of us to evade any of the provisions of the same, will most properly prove our unfitness to be connected with said Carnegie Brothers and Company (Limited).

7. Any person signing this agreement shall become a party of the second part hereto, with as full effect as if named in the body of the same.

In witness whereof the first party has hereto set its common seal, attested by the signatures of its chairman and secretary, and the parties of the second part have hereto set their respective hands and seals the day and date first above given.

(Signed) CARNEGIE BROTHERS AND COMPANY (LIMITED),
By H. PHIPPS, Jr., *Chairman.*
D. A. STEWART, *Treasurer.*

Attest:
S. E. MOORE, *Secretary.*

ANDREW CARNEGIE.	[SEAL.]
HENRY PHIPPS, Jr.	[SEAL.]
GEO. LAUDER.	[SEAL.]
D. A. STEWART.	[SEAL.]
JOHN WALKER.	[SEAL.]
H. M. CURRY.	[SEAL.]
WM. L. ABBOTT.	[SEAL.]
H. W. BORNTRAEGER.	[SEAL.]
S. E. MOORE.	[SEAL.]
W. H. SINGER.	[SEAL.]

Signed, sealed, and delivered in the presence of—
CHAS. T. C. MACKIE,
(As to Andrew Carnegie and Henry Phipps, jr.)
F. T. F. LOVEJOY,
(As to Geo. Lauder, D. A. Stewart, John Walker, H. M. Curry, Wm. L. Abbott, H. W. Borntraeger, S. E. Moore, and W. H. Singer.)

EXHIBIT B.

ACTUAL VALUE CARNEGIE STEEL CO. (LIMITED).

JANUARY 10, 1887.

Having so answered, we do respectfully suggest that any such estimate of values of our assets as is contained in the ninth paragraph of the plaintiff's bill is wholly immaterial, as we are advised, in the present case. The rights of the plaintiff touching the price which is to be paid to him for his interest are based altogether upon the "ironclad agreement," to which he is a party. The value of his interest is, by the terms of said agreement, to be ascertained

by reference to the books of the company. These books were under the supervision of the plaintiff until the day of his resignation from the chairmanship of our company, and the entries have been made from time to time in accordance with his express judgment.

These books show that the net value on the 31st day of December, 1899, of the assets of the association was $75,610,104.06. To a large extent this book value represents the actual cost of the properties represented in the balance sheets of the association. From time to time during the plaintiff's membership in the association he and other members were appointed a committee to revalue certain assets. In every instance of such revaluation the plaintiff himself has been a member of such committee, and the values now entered and the properties included as having value may be taken as the plaintiff's own statement of their value to his fellow members, on which during plaintiff's membership more than 15 settlements have been made with retiring members or the estate of deceased members.

In the year 1892, and in anticipation of the dividend of profits which was then declared, the assets of the association were carefully revalued and appraised by a committee consisting of H. C. Frick, H. M. Curry, and F. T. F. Lovejoy.

Again, in the year 1899, at the suggestion of a committee consisting of H. C. Frick, Henry Phipps, jr., and F. T. F. Lovejoy, certain changes were made in the "book value" of the assets of the association, and the result thus reached was a just, fair, and reasonable valuation of said assets, and was so accepted by the association.

Every month a balance sheet of the association's assets and liabilities has been prepared and a copy of the same furnished to the plaintiff, on which balance sheet the "book value" of the capital is clearly shown; and we aver that the valuation of the assets as shown on said books and balance sheets is a full, fair, and accurate valuation of the same, and that there has not been omitted from such books and balance sheets any asset which should properly find a place thereon. (Pp. 22 and 23. Answer.)

THE CARNEGIE STEEL CO. (LIMITED).

EXHIBIT C.

Production and prices of Bessemer steel rails in the United States from 1897 to 1907.

Years.	Gross tons.	Prices.
1897	1,644,520	$18.75
1898	1,976,702	17.62
1899	2,270,585	28.12
1900	2,383,654	32.29
1901	2,870,816	27.33
1902	2,935,392	28.00
1903	2,946,756	28.00
1904	2,137,957	28.00
1905	3,192,347	28.00
1906	3,791,459	28.00
1907	3,380,025	28.00

Duty.—Seven dollars and eighty-four cents per ton from August 28, 1894, to 1897 (when Dingley tariff adopted). (See p. 106 of Statistics of the American and Foreign Iron Trades for 1897, published in 1908 by the American Iron and Steel Association, 261 South Fourth Street, Philadelphia, Pa.)

EXHIBIT D.

Average quarterly prices of beams and channels at Pittsburg from 1894 to March 31, 1908.

[Compiled for Statistics of American and Foreign Iron Trades for 1908 by one of the leading manufacturers of structural shapes in western Pennsylvania (see p. 43). Quoted from the Annual Statistical Report of the American Iron and Steel Association (p. 43) for April, 1909.]

During the above period the lowest average quarterly price for beams and channels was the third quarter of 1897, when the ruling price was 98 cents per 100 pounds.
The highest average quarterly price was in the last quarter of 1899 and the first quarter of 1900, when it was $2.25 per 100 pounds.

Years.	Quarter.				Average.
	First.	Second.	Third.	Fourth.	
1894	$1.21	$1.20	$1.27	$1.25	$1.23
1895	1.21	1.25	1.56	1.58	1.40
1896	1.44	1.49	1.55	1.50	1.49
1897	1.55	1.33	.98	1.09	1.24
1898	1.15	1.15	1.19	1.20	1.17
1899	1.35	1.60	2.12	2.25	1.83
1900	2.25	2.21	1.68	1.50	1.91
1901	1.51	1.60	1.60	1.60	1.58
1902	1.60	1.60	1.60	1.60	1.60
1903	1.60	1.60	1.60	1.60	1.60
1904	1.60	1.60	1.55	1.41	1.54
1905	1.55	1.60	1.63	1.70	1.62
1906	1.70	1.70	1.70	1.70	1.70
1907	1.70	1.70	1.70	1.70	1.70
1908[1]	1.70	1.68	1.60	1.60	1.64
1909[1]	1.45	1.46	.....	.....	.....
1910[1]	1.71	1.71	.....	.....	.....

[1] Figures for 1908, 1909, and 1910 from report of April, 1909 (p. 46).

EXHIBIT E.

Table showing increase in profits against production during two years, 1899–1900.

[Conspiracy control through nine companies compared with last year (1897) independent operation by 200 concerns. In 1898 consolidations in progress, practically no competition.]

Names.	Profits.		Production increased.
	1897	Average, 1899 and 1900.	
Carnegie (prior to conspiracy)	$7,500,000	$32,500,000	Not quite double.
Federal Steel (3 concerns)	1,500,000	7,500,000	70 per cent.
American Steel and Wire (45 concerns)	2,250,000	8,000,000	65 per cent.
National Tube Co. (30 concerns)	2,500,000	12,000,000	85 per cent.
American Bridge (30 concerns)	900,000	4,500,000	70 per cent.
National Steel (10 concerns)	1,250,000	5,000,000	80 per cent.
American Steel Hoop (15 concerns)	1,000,000	5,000,000	85 per cent.
American Tin Plate (40 concerns)	700,000	3,500,000	75 per cent.
American Sheet Steel (27 concerns)	800,000	[1] 5,000,000	90 per cent.

[1] For 1900.

EXHIBIT F.

Average yearly price of iron and steel, also wire nails, at Chicago from 1897 to 1901.

[The prices given have been averaged from weekly quotations, and are per ton of 2,240 pounds, except for bar iron, steel bars, and cut and wire nails, which are quoted by the 100 pounds and in 100-pound kegs, respectively. (P. 23, Statistics of the American Iron Trade for 1901, American Iron & Steel Association Report, Philadelphia, 1902.)]

	1897	1898	1899	1900	1901
Old iron T rails at Philadelphia	$12.49	$12.39	$20.36	$19.51	$19.32
No. 1 foundry pig at Philadelphia	12.10	11.66	19.36	19.98	15.87
Gray forge pig iron at Philadelphia	10.48	10.23	16.60	16.49	14.08
Gray forge pig at Pittsburg	9.03	9.18	16.72	16.90	14.20
Bessemer pig iron at Pittsburg	10.13	10.33	19.03	19.49	15.93
Steel rails at mills, Pennsylvania	18.75	17.62	28.12	32.29	27.33
Steel billets at mills, Pittsburg	15.08	15.31	31.12	25.06	24.13
Best bar iron from store, Philadelphia	1.31	1.28	2.07	1.96	1.84
Best bar iron at mills, Pittsburg	1.10	1.07	1.95	2.15	1.80
Steel bars at mills, Pittsburg	.97	.98	1.93	1.63	1.47
Cut nails from store, Philadelphia	1.49	1.31	2.21	2.46	2.29
Wire nails, base price, at Chicago	1.46	1.45	2.60	2.76	2.41

EXHIBIT G.

The nine companies, 1892.

Names.	Description of assets.	Value.	Capitalization.	United States Steel Corporation paid—
Carnegie Co.	Carnegie Steel, Carnegie, Phipps, each $5,000,000; unite, increase to $25,000,000. Thereafter acquired: H. C. Frick, coke; Edgar Thompson, steel, Pittsburg, Bessemer railroad stock, ore properties, Youghiogheny Railroad, 3 water companies.	$76,000,000	$320,000,000	$520,000,000
Federal Steel	Minnesota iron stock worth $10,000,000; Illinois steel stock worth $9,000,000; Lorain steel stock, $3,000,000; Elgin-Joliet Railroad stock, no value; and cash $10,000,000.	32,000,000	100,000,000	110,000,000
American Steel and Wire	About 45 plants and cash, $10,000,000.	32,000,000	90,000,000	98,000,000
National Tube	25 plants and cash, $5,500,000	30,000,000	80,000,000	103,000,000
American Bridge	30 plants and cash, $3,500,000	18,500,000	61,000,000	65,000,000
National Steel	10 plants and cash, $4,000,000	21,000,000	57,000,000	73,000,000
American Steel Hoop	15 plants and cash, $1,500,000	9,500,000	33,000,000	33,000,000
American Tin Plate	35 plants and cash, $2,500,000	12,500,000	46,000,000	62,000,000
American Sheet Steel	27 plants and cash, $4,000,000	13,000,000	49,000,000	49,000,000
		240,000,000	836,000,000	1,113,000,000

Plants include materials, bills receivable.

Cash means working capital supplied each company at organization. Difference between $1,113,000,000 and $1,250,000,000 outstanding at organization was absorbed by promoting syndicate, who furnished $25,000,000 working capital to United States Steel Corporation.

EXHIBIT H.

PANIC AMONG MILLIONAIRES.

In the conversion of the heathen, missionaries have found it useful to describe the condition of the damned before representing a picture of the joys of the blessed. It was on some such principle that the threat of the industrial war was made by the Carnegies before the blessing of the cooperation and consolidation were set out before the vision of the alarmed financiers of the country. The panic produced by the double threat of the Carnegies to build a rival tube works and to enter in competition with the great Pennsylvania Railroad has been graphically described by a recent magazine writer:

"Either project as a threat would have been alarming. The two together as imminent and assured accomplishments produced a panic. And a panic among millionaires, while hard to produce, is, when once under way, just as much of a panic as is a panic among geese. They ran this way and that; they hid, one behind another; they filled the newspapers with their squawkings; they reproached, implored, accused each other. At last they ran to their master—Morgan. And he negotiated with Carnegie."

But the negotiations came later. They were preceded by a bankers' dinner, at which was preached the joy of industrial peace. This famous dinner also grew out of a previous incident connected with Mr. Frick.

Somewhere about the time of the purchase of the Moore option Mr. Frick invited a number of prominent bankers to Pittsburg to show them the armor-plate vault that had just been built for the Union Trust Co. Incidently they were given the opportunity of seeing the extent of the iron and steel works at Pittsburg. Up to that time the resources of the Iron City were but imperfectly known in Wall Street. This visit showed that it was the busiest place in the world and the center of its greatest industry. Duly impressed, the bankers returned to New York, and the courtesies they had received as Mr. Frick's guests were now treated as an outstanding asset of the Carnegie Steel Co. Through the influence of Mr. Albert C. Case, credit agent of the Carnegie Co., and that of Mr. Charles Stewart Smith, an intimate friend of Andrew Carnegie, arrangements were made with a prominent banker of New York, who had been among those entertained by Mr. Frick, to give a return dinner, ostensibly in honor of Mr. Schwab. This dinner was duly given and, as a spontaneous outburst of enthusiasm for Mr. Frick's earlier protégé, it has been much written about and discussed.

Mr. Morgan attended the dinner and listened with great interest to Mr. Schwab's views on industrial combinations—"views apparently so large, so wise, and so interesting that Mr. Morgan was strongly impressed by the speech and the speaker." Then, there began a series of interviews, which eventually led to the founding of the United States Steel Corporation, to the realization of Mr. Carnegie's desire to retire from the control of the business, and to the sale and absorption of the Carnegie Co. It was the most masterful piece of diplomacy in the history of American industry, and formed a fitting climax to Andrew Carnegie's romantic business career.

EXHIBIT I.

ANGLO-AMERICAN MEMORIES—MR. ANDREW CARNEGIE AND HIS DEAL WITH MR. PIERPONT MORGAN.

LONDON, *December 24.*

A note arrived early one morning which ran thus:

"If you will come to lunch at 1.30 to-day I shall have something to tell you which I think you may like to hear.—A. C."

I went and found Mr. Carnegie alone. He was living at the time in, I think, West Fifty-fifth Street. I say I think because I never found it possible to be sure of an address in New York without referring to one of those extremely expensive directories or registers for which the New York public joyfully pays fantastic prices. A London "Court Guide" or "Royal Blue Book" costs 5s.,

the equivalent of $1.25. The corresponding "Social Register" in New York, containing much less matter, is published at $5. Perhaps because the apparently simple but really complicated system of street numbering makes it an article of necessity. Mr. Halstead used to say:

"I never know your address. Sometimes I can remember the number of your street and sometimes the number of your house, but I can never remember the two together at the same time."

When Mr. Carnegie's note came I was living in rooms at the Renaissance, an apartment house which was, I believe, at the corner of Fifth Avenue and West Forty-third Street, unless it was East Forty-third Street, or perhaps East or West Forty-fifth Street. But at the time I knew and nearly always remembered where I lived, and I knew where Mr. Carnegie lived, because I had been there pretty often, and his address was on the top of his note paper.

All this may seem in the nature of a stage aside, but is really very pertinent to my story, since my story deals with figures and since Mr. Carnegie had not then built himself that great barracks of a house between Nintieth and Ninety-first Streets, in Fifth Avenue, or between Ninety-first and Ninety-second, or some other streets out of the arithmetic. He and lunch were waiting when I came in, and he began at once, like the man of business he is and always has been:

"I have sold the Homestead Works and all my steel interests to Pierpont Morgan."

There had been rumors for some days of an impending "deal," but the surprise was none the less complete. Mr. Carnegie, always mindful of effects and impressions, regarded with evident pleasure the look of amazement there must have been on my face. Amazement because Mr. Carnegie and Pittsburg and the steel industry had always seemed to us all identical or indissolubly bound up each with the other. And here was Mr. Pierpont Morgan coming in like a divorce-court judge to put asunder those whom circumstances and long years had joined together.

Mr. Carnegie went on with his story as we lunched. At that time it was all new, of course. So much of it has since become known that I need not go very far into those figures, which, as I said before, I find so perplexing. I will sum it all up in one of those tremendous sentences which, though they stupefy the ordinary mind, are so much mother's milk to a man like Carnegie, accustomed to think in millions. He said:

"I suppose you would like to know the price. I have sold at a price which secures to me a yearly income from this source alone of £3,250,000."

The world spun round as he named the sum. It is always spinning round, but it spun a little faster than usual for a minute or two. Mr. Carnegie, you will observe, thinks not only in millions but in sterling. To that extent he has remained a British subject. In dollars the figure of his yearly income works out, roundly, at $16,250,000. Needless to say that there has been in all the history of the world no other such fortune purely industrial.

I asked whether the transaction was complete.

"Practically; yes. But no papers have passed. It takes time to prepare papers. But Mr. Morgan and I talked the thing over yesterday and came to terms."

Then, still with an eye to stage management, Mr. Carnegie paused; then added:

"There is nothing in writing. Everything between us has been by word of mouth."

"But you must have put a few figures on paper, if nothing else."

"No, not one. If either of us should die to-night the deal would be off."

Happily, neither of them did die that night. The agreement was put in legal shape. The papers of the Steel Corporation were also put in legal shape by Mr. Victor Morawetz and Mr. Lynde Stetson. It took them just 11 days to do it. Unless one of the two should object, I will go so far as to say that I was told afterwards, on authority it would not be easy to dispute, that their fee for these 11 days' work was $500,000. I dare say that seems moderate in New York, where legal services are paid at a rate and in a manner unknown in London. But when I have told the story in London it has not always been believed.

Even when I explain that Mr. Morawetz and Mr. Stetson are at the summit of their profession, the Londoner is still incredulous. Then I am driven to explain further that one reason for the great sums paid to these gentlemen and to Mr. Olney and to Mr. Root and others of that rank—there are not many—is that the deeds they draw are in fact insurance policies; that the great

corporations are willing to pay great prices because it is understood that the instruments thus framed are to go through the fire of litigation and come out unscathed. To a still skeptical Englishman I have sometimes quoted the saying of a great financier in New York, whose name you will search these columns for in vain:

"When we put a new enterprise on the market the difficulty is not in finding the capital but in keeping inside the law."

A memorable declaration even when you put wholly aside, as of course we all do, all the sinister meanings to which the words lend themselves.

It was, I understood, Mr. Morgan who had proposed to buy, and not Mr. Carnegie who had proposed to sell. It may not much matter. Their minds met with the ease natural to men to whom great affairs and quick decisions and all-embracing views of complicated questions are of daily occurrence. If I should ever have anything to say of Mr. Morgan, whom I put among the really great men I have known, this transaction would have to be reckoned high up among those on which his immense fame is built. There have been, I suppose, moments in the history of the United States Steel Corporation when the outside world—or shall I say Wall Street?—considered that Mr. Carnegie had the best of this deal—fleeting moments which now belong to history and connect themselves with many outside circumstances.

There was, at any rate, as I talked with Mr. Carnegie, no sign of exultation in the sense of having got the better of Mr. Morgan. These two great powers had met and made a treaty; a treaty which involved neither surrender nor discredit. There are such treaties. Franklin, prone to epigrams and proud of his diplomacy, said in his letter to Josiah Quincy: "There never was a good war or a bad peace." But that is a professional opinion—the sort of thing that Mr. Bright also used to say; not an historical statement, but a pious aspiration. Mr. Bright was less sweeping than Franklin. He said to me:

"There has been no just war since William III except your war for the Union, and that was forced on you."

In Franklin's mind lurked the thought that peace and not war was the work and the object of diplomacy. But it is by no means always so.

Mr. Carnegie continued:

"I take bonds in payment, 5 per cent bonds secured upon the entire property of all the seven corporations (afterwards eight) which merge in the Steel Corporation. I think I know pretty well what they are all worth, and if there's a better security anywhere than my mortgage will be I don't know where."

Luncheon was over before Mr. Carnegie had finished his talk, and whisky was served as a liquor, which I declined, but was not allowed to.

"I thought you had tasted it before, but of course you have not or you would not refuse. Dewar sends me a private supply every year out of his private cask, the age of which you can never tell because it is replenished yearly—all there is room for—with the best and next oldest whisky. The cask is never empty and never full."

"But that is what the sherry-wine growers do with their stock of 'mother sherry.'"

"Never mind about the sherry. I am a Scotchman, and whisky is the wine of my country. Drink it."

That is but one more expression of Mr. Carnegie's affectionate pride in his native land.

It may be noted that one of the parties to this great bargain was a man of Wall Street. Mr. Carnegie, of course, is not, and he is sometimes quoted as not liking Wall Street or its methods. I have heard him say:

"Bring me your money, and I will give you 5 per cent for it. Don't speculate. I have never bought a share of stock for the rise nor sold for the fall. It is an agreement with my partners that no one of them shall speculate."

So it is evident he is not a prepossessed witness in favor of any of the Wall Street group. But when I said to him, "You trust Morgan's word," he answered:

"Yes, but Morgan is Morgan."

And perhaps even Mr. Roosevelt, who admits, or did admit, that there are good trusts as well as bad trusts, would admit, or would once have admitted, that there are men in Wall Street to whom honor and good faith and business probity mean what they mean to men elsewhere.

It was evident that much of what Mr. Carnegie said to me was intended to be cabled to the Times (London), and that some of it was not meant to be,

was equally evident. When I said so to him he answered in almost the very words Prince Bismarck had used in similar circumstances.

"It is for you to distinguish."

But as this was a matter of business and figures, I said to Mr. Carnegie, I would send him a copy of my dispatch to look at before it went. I sent it at 4 o'clock by messenger, asking him to let me have it before 6, the hour at which, as a rule, long dispatches to London had to be filed, 6 in New York being 11 at night in London. It came back at 4.30, with an inscription at the bottom: "O. K.—A. C." Which I thought so interesting that I kept the original and handed a copy to the cable messenger. And I imagine there has seldom been a business dispatch which has so stirred the business world of London as this account of the great treaty between Mr. Morgan and Mr. Carnegie.

G. W. S.

EXHIBIT J.

THE STEEL CORPORATION AND PRICES.

In order to form some estimate of the influence of the Steel Corporation on prices it will be necessary to give some attention to iron and steel prices in general. During the last 30 years, in which the industry in the United States has grown to its present predominant position in the markets of the world, the prices of iron and steel have greatly declined. From 1870 to 1900 this decline on the average, according to the Twelfth Census, was considerably more than 50 per cent. The course of prices is well typified by those of steel rails, which until recently formed the bulk of the country's steel trade. The price per ton of this commodity averaged $92.91 in 1870, $67.50 in 1880, $31.75 in 1890, and $32.29 in 1900. Late in 1900 the price sank to $26. During the depression of the middle nineties prices were lower than ever before or since—steel rails selling as low as $17 per ton in June, 1898. Since April, 1901, steel rails have been quoted at $28. * * *

Taking the country as a whole, the average cost per ton of iron ore at blast furnaces was approximately $4.60 in 1880, $3.70 in 1890, and less than $3 in 1900. * * *

In steel manufacture there has been a similar cheapening of costs. According to the records of the United States Census, the average cost of materials per ton of finished product was $37 in 1880 and $26 in 1890. The average output per employee in the same years were, respectively, 37 and 60 tons; and the average wages per ton of product were $12.10 and $9.40. These figures show that the steel industry made considerable progress during the decade ending with 1890. Great strides were also made in the closing decade of the century. Mr. Kirchhoff, in an address to the American Institute of Mining Engineers, in February, 1899, stated that the cost of producing Bessemer steel ingots had diminished by about one-half between 1887 and 1898. The total cost of producing Bessemer steel ingot declined in the proportion of 100 to 64.39 between the years 1891 and 1898.

That the consolidations of the time were a factor influencing prices can be seen in the cases of the American Tin Plate and the American Steel and Wire Cos. These companies had something of a monopoly of the market in their respective lines; and this monopoly was reflected in the prices of the period. Shortly after the organization of the American Tin Plate Co. in December, 1898, the price of coke tin plate (14 by 20) was raised from $2.70 per 100-pound box to $3 at mill. Quotations in the leading centers of trade in the northeastern part of the country where upward of $3.20 per 100-pound box. During February, 1899, the average price was $3.55. By the end of the year it was $4.84, and it remained at this figure during a large part of the following year. In like manner, after the organization of the American Steel and Wire Co., there was a great rise in prices. Wire rods which sold for $20 to $22.50 per ton in 1898 were quoted at steadily increasing prices during 1899. By January, 1900, the price had reached $50 per ton. Wire nails, which had been quoted at $1.40 to $1.50 per 100-pound keg in 1898, were steadily raised in price during 1899 until they were quoted at $3.20 in the early months of 1900—a higher figure than that reached under the régime of the notorious wire-nail association of 1895 and 1896.—(Berglund: U. S. Steel Corporation, pp. 127–132.)

Again this very able authority very aptly observes:

A subject which has received considerable public attention in recent years is the prices charged by the Steel Corporation and other companies in the foreign markets. This question has arisen in connection with investigations concerning the influence of the tariff on home prices and certain allegations that foreign consumers are favored at the expense of domestic purchasers. In 1901, after the Steel Corporation had been organized, steel rails were quoted at $28 per ton for the domestic consumer, and delivered to the European buyer at $23. Plain wire during the same period was quoted to the Canadian dealer at $11 per ton less than to the home dealer. It is reported that Mr. Schwab informed Mr. Joseph Lawrence, M. P., that the Steel Corporation could deliver steel billets in England at $16.50 per ton. The price of steel billets in the United States at the same time was $24. Such discriminating charges have naturally aroused public curiosity in regard to the reason why the domestic consumer should be compelled to pay more than the foreigner for the same goods * * *.—(Berglund: U. S. Steel Corporation, p. 144.)

EXHIBIT K.

[House Document No. 980, Sixty-first Congress, second session.]

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., June 23, 1910.

SIR: The Department of Justice has received a copy of the resolution adopted by the House of Representatives on June 16, 1910, which reads as follows:

"*Resolved*, That the Attorney General be, and he is hereby, directed, if not incompatible with the public interest, to report to the House of Representatives for its information all facts in his possession which show or tend to show whether or not there exists at this time, or heretofore within the last 12 months has existed, a combination, agreement, or conspiracy between the Carnegie Steel Co., the Federal Steel Co., the American Tin Plate Co., the National Tube Co., the American Bridge Co., the American Steel & Wire Co., the American Steel Hoop Co., or any of said companies, and the United States Steel Corporation, or others, in violation of the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' or of the interstate-commerce act of 1887, and acts amendatory thereof, or other laws of the United States.

"And all facts in his possession which show or tend to show whether or not the United States Steel Corporation and the other companies, corporations, or copartnerships hereinbefore mentioned, in combination or singly, have, contrary to the laws of the United States in such cases made and provided, interfered or injured, or attempted to interfere with or injure competition in the iron and steel industry in the United States. And all facts in his possession which show or tend to show whether or not said companies, acting together or singly, have, contrary to the laws of the United States in such cases made and provided, conspired to increase the cost of iron and steel to consumers, or to deteriorate the quality thereof, or to increase the hours, or to reduce its wages of labor.

"And all facts in his possession which show or tend to show whether or not any coal companies, railway transportation companies, banks, and insurance companies, or what officers or directors thereof, if any, have, contrary to the laws of the United States in such cases made and provided, conspired and confederated with said United States Steel Corporation and the other companies hereinbefore mentioned, for the purpose of aiding and abetting said United States Steel Corporation and the other said companies engaged in the iron and steel industry in increasing the cost of iron and steel to consumers, or deteriorating the quality thereof, or increasing the hours or decreasing the wage of labor, or the commission of any offenses against the laws of the United States hereinbefore mentioned.

"And all other facts in his possession which show or tend to show whether or not there exists such combination between the United States Steel Corporation and the other said companies engaged in the iron and steel industry contrary to the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' or other laws of the United States."

Several statements and communications have been made to this department at different times, and data of various kinds have been furnished to or procured by the department, concerning the matters covered by the quoted resolution.

Such statements and communications, however, were essentially confidential, even when not so expressly declared. Further investigation at any time would be greatly hampered by publication of the departmental data, and the matters to which the resolution of the House of Representatives relates are closely akin to important litigation already pending in the Supreme Court and now near decision. It is therefore considered that a report at this time, such as the resolution contemplates, would be manifestly incompatible with the public interest, and should be withheld in accordance with the terms of the resolution itself. I have the honor to be,

Very respectfully,

LLOYD W. BOWERS,
Acting Attorney General.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

EXHIBIT L.

[Senate Report No. 1110, part 2, Sixtieth Congress, second session.]

UNITED STATES SENATE,
Washington, D. C., March 2, 1909.

The undersigned, members of the Committee on the Judiciary, submit the following as their views in answer to Senate resolution No. 243, Sixtieth Congress, second session, which is as follows:

"*Resolved*, That the Committee on the Judiciary be, and it is hereby, directed to report to the Senate, as early as may be practicable, whether, in the opinion of the committee, the President was authorized to permit the absorption of the Tennessee Coal & Iron Co. by the United States Steel Corporation, as is shown by the message of the President in response to Senate resolution No. 240, this session.

The message of the President, which is referred to in the resolution under consideration, is as follows:

"*To the Senate:*

"In connection with the following resolution of the Senate, passed January 4, 1909—

"'*Resolved*, That the Attorney General be, and he is hereby, directed to inform the Senate—

"'1. Whether legal proceedings under the act of July 2, 1890, have been instituted by him or by his authority against the United States Steel Corporation on account of the absorption by it, in the year 1907, of the Tennessee Coal & Iron Co., and if no such proceedings have been instituted, state the reason for such nonaction.

"'2. Whether an opinion was rendered by him or under his authority as to the legality of such absorption; and if so, attach a copy if in writing, and if verbal state the substance of it'—

"I transmit herewith the following letter from the Attorney General:

"'OFFICE OF THE ATTORNEY GENERAL,
"'*Washington, January 6, 1909.*

"'SIR: In accordance with your instructions, I have the honor to inclose you a certified copy of the resolution adopted by the Senate, wherein I am directed to inform the Senate whether legal proceedings under the act of July 2, 1890, have been instituted by me or by my authority against the United States Steel Corporation on account of the absorption by it, in the year 1907, of the Tennessee Coal & Iron Co. As you are aware, no such proceedings have been instituted.

"'I remain,

"'Yours, most respectfully and truly,

CHARLES J. BONAPARTE,
"'*Attorney General.*

"'THE PRESIDENT,
"'*The White House.*'

"As to the transaction in question, I was personally cognizant of and responsible for its every detail. For the information of the Senate I transmit a copy of a letter sent by me to the Attorney General on November 4, 1907, as follows:

"'THE WHITE HOUSE,
"'*Washington, November 4, 1907.*

"'MY DEAR MR. ATTORNEY GENERAL: Judge E. H. Gary and Mr. H. C. Frick, on behalf of the Steel Corporation, have just called upon me. They state that

there is a certain business firm (the name of which I have not been told, but which is of real importance in New York business circles) which will undoubtedly fail this week if help is not given. Among its assets are a majority of the securities of the Tennessee Coal Co. Application has been urgently made to the Steel Corporation to purchase this stock as the only means of avoiding a failure. Judge Gary and Mr. Frick inform me that as a mere business transaction they do not care to purchase the stock; that under ordinary circumstances they would not consider purchasing the stock, because but little benefit will come to the Steel Corporation from the purchase; that they are aware that the purchase will be used as a handle for attack upon them on the ground that they are striving to secure a monopoly of the business and prevent competition—not that this would represent what could honestly be said, but what might recklessly and untruthfully be said.

"'They further inform me that as a matter of fact the policy of the company has been to decline to acquire more than 60 per cent of the steel properties, and that this purpose has been persevered in for several years past, with the object of preventing these accusations, and as a matter of fact their proportion of steel properties has slightly decreased, so that it is below this 60 per cent, and the acquisition of the property in question will not raise it above 60 per cent. But they feel that it is immensely to their inerest, as to the interest of every responsible business man, to try to prevent a panic and general industrial smash-up at this time, and that they are willing to go into this transaction, which they would not otherwise go into, because it seems the opinion of those best fitted to express judgment in New York that it will be an important factor in preventing a break that might be ruinous; and that this has been urged upon them by the combination of the most responsible bankers in New York, who are now thus engaged in endeavoring to save the situation. But they asserted they did not wish to do this if I stated that it ought not to be done. I answered that, while of course I could not advise them to take the action proposed, I felt it no public duty of mine to interpose any objection.

"'Sincerely, yours,

"'THEODORE ROOSEVELT.

"'Hon. CHARLES J. BONAPARTE,
"'*Attorney General.*'

"After sending this letter I was advised orally by the Attorney General that, in his opinion, no sufficient ground existed for legal proceedings against the Steel Corporation, and that the situation had been in no way changed by its acquisition of the Tennessee Coal & Iron Co.

"I have thus given to the Senate all the information in the possession of the executive department which appears to me to be material or relevant on the subject of the resolution. I feel bound, however, to add that I have instructed the Attorney General not to respond to that portion of the resolution which calls for a statement of his reasons for nonaction. I have done so because I do not conceive it to be within the authority of the Senate to give directions of this character to the head of an executive department or demand from him reasons for his action. Heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever.

"THEODORE ROOSEVELT.

"THE WHITE HOUSE, *January 6, 1909.*"

Besides the message above set forth, the committee has had the benefit of certain annual reports of the United States Steel Corporation and of the Tennessee Coal, Iron & Railroad Co.; well-considered articles in standard magazines; testimony taken before the Committee on Ways and Means of the House of Representatives in 1908; daily market quotations of stock of the Tennessee Coal, Iron & Railroad Co. and of bonds of the United States Steel Corporation for the year 1907; the Statistical Abstracts of the United States, particularly that for 1907; and the testimony of several witnesses taken by the subcommittee. From these sources we think the following facts are established:

1. That on or about November 5, 1907, the United States Steel Corporation purchased all of the stock of the Tennessee Coal, Iron & Railroad Co. except $220,160, the amount of stock acquired being $30,375,825, and absorbed the latter company.

2. Both companies were at the time of the absorption engaged in manufacturing and in interstate commerce. The Steel Corporation paid for the stock

of the Tennessee company $632,655 in cash (the cash payment being made December 15, 1907) and $34,684,977.64 in bonds of the Steel Corporation, aggregating $35,317,632.62, or nearly $5,000,000 in excess of the par value of the Tennessee company stock purchased. As between the Steel Corporation and Moore & Schley or their customers no cash whatever passed. At the time this stock was acquired it was quoted around 80 on the stock exchange, while steel bonds of the kind given in exchange were quoted at 85 and 86, so that the price paid for the Tennessee company stock was about 20 per cent more than its market quotation.

3. In his message to the Senate January 6, 1909, on this subject, referring to the acquisition of the stock and the absorption of the Tennessee company by the Steel Corporation, the President said: "As to the transaction in question, I was personally cognizant of and responsible for its every detail." In his letter of November 4, 1907, to the Attorney General, which is incorporated in the message, after reciting that representatives of the United States Steel Corporation had called upon him in Washington that day and stated that, for reasons set forth in his letter, it had been suggested that the Steel Corporation should purchase a majority of the securities of the Tennessee company represented to have been then held by "a certain business firm" in New York City, but that they did not wish to do this if the President "stated it ought not to be done," the President said: "I answered that while of course I could not advise them to take the action proposed, I felt it no public duty of mine to interpose any objection." As the letter of the President was addressed to the Attorney General, who is expressly and exclusively charged with the duty of enforcing the act of July 2, 1890, on behalf of the public, known as the "Sherman antitrust law," we think it was, in effect, a direction to the Attorney General not to interfere, but to permit the proposed purchase and absorption to be consummated if the parties interested desired to do so. Moreover, the letter to the Attorney General shows that the legality of the merger was discussed and that the President gave the representatives of the Steel Corporation who visited him to understand that the action proposed could be taken if desired. It was not until this understanding was telephoned from Washington to New York City by one of the representatives of the Steel Corporation to another representative there that the purchase and absorption were made. In our opinion the President permitted and sanctioned the acquisition and merger.

4. In his letter to the Attorney General of November 4, 1907, already referred to, the President said: "Judge E. H. Gary and Mr. H. C. Frick, on behalf of the Steel Corporation, have just called upon me. They state that there is a certain business firm (the name of which I have not been told, but which is of real importance in New York business circles) which will undoubtedly fail this week if help is not given. Among its assets are a majority of the securities of the Tennessee Coal Co. Application has been urgently made to the Steel Corporation to purchase this stock as the only means of avoiding a failure."

The firm referred to in this letter is that of Moore & Schley, stockbrokers of New York City. This firm did not hold as assets, as represented to the president by officials of the Steel Corporation, any portion whatever of the stock of the Tennessee company. This is shown positively by Grant B. Schley, a member of the firm, in his testimony before the subcommittee:

"Senator CULBERSON. You have already stated that your firm did not hold as assets of the firm a single dollar of this stock?

"Mr. SCHLEY. No; they were not subscribers and they did not buy any of the stock.

"Senator CULBERSON. They did not, therefore, hold it as a part of their assets?

"Mr. SCHLEY. They did not own it. It could not be their assets without they owned it." (Hearing, p. 71.)

It is also stated by this witness, without contradiction from any source, that this firm was not borrowing for its customers on a majority of the stock of the Tennessee company.

"Senator CULBERSON. In November, 1907, was the majority of this stock in hock anywhere?

"Mr. SCHLEY. I can't tell that. I know what we were loaning, but other people had taken their stocks away.

"Senator CULBERSON. Was the majority of the stock represented by the list you have furnished this committee, in November, 1907, in hock anywhere, so far as you know?

"Mr. SCHLEY. I can't tell.

"Senator CULBERSON. So far as you know?

"Mr. SCHLEY. As far as I know, I can't tell. I know what we were borrowing. I can't tell what others were borrowing.

"Senator CULBERSON. You were not borrowing on a majority of the stock?

"Mr. SCHLEY. No." (Hearings, p. 80.)

5. While the firm of Moore & Schley did not own any of the stock of the Tennessee company, and had not as brokers borrowed money for themselves or their customers on a majority of the stock of that company, it may be useful to state concisely the situation as to his stock in so far as it was developed before the subcommittee. In 1905 a number of persons at the suggestion of Grant B. Schley purchased a controlling interest in the Tennessee Coal, Iron & Railroad Co., the names and individual shares of stock being as follows:

[Original revised.]

	Shares.
O. H. Payne	10,300
L. C. Hanna	10,300
G. B. Schley	10,300
J. B. Duke	10,300
E. J. Berwind	10,300
J. W. Gates	10,300
A. N. Brady	10,300
G. A. Kessler	10,300
O. Thorne	10,300
E. W. Oglebay	5,150
H. S. Black	5,150
F. D. Stout	5,150
J. W. Simpson	5,150
G. W. French	2,500
S. G. Cooper	1,500
J. A. Topping	1,000
Total	118,300

Each of these persons in 1905 was very strong financially, some of them being men of great wealth, and this financial status continued during their holding of this stock. In order to raise money to improve, enlarge, and develop the property, additional stock was issued until the total issue of stock amounted to $30,375,825. With the exception of small amounts to others, the syndicate or group of persons which bought the controlling interest in 1905 took the additional issue of stock. Each of that group paid for all his stock in full, some of them taking their stock to other places and some leaving it with Moore & Schley for safe-keeping. Grant B. Schley, a member of the firm of Moore & Schley, owned individually, in 1907, about 25,000 shares of the stock, of the par value of $2,500,000. Improvements amounting to about $6,500,000 were made in the property of the company after control was obtained by the group of persons named out of the proceeds of the new issue of stock.

At the time of the panic, in the fall of 1907, the only outstanding loans, with the stock of the Tennessee company as collateral, in banks and trust companies, so far as careful inquiry has disclosed, were $482,700 in the Trust Co. of America, on stock at 60 as collateral, and between $5,000,000 and $6,000,000 on 90,000 to 105,000 shares of the stock in several banks in New York, among them the First National Bank and the Chase National Bank. Moore & Schley had no connection with the loans in the Trust Co. of America, but they negotiated the other loans for themselves or their customers. In the course of their brokerage business Moore & Schley made loans to some of the holders of the Tennessee company stock, on their stock, and reimbursed themselves by borrowing from banks on the stock to the extent they could, but the amount they loaned has not been shown. The loans in the Trust Co. of America were paid in November, 1907, and January, 1908, in due course of business, the merger of the Tennessee company having no effect upon them. It was known, however, that Oakleigh Thorne, president of the trust company, was a member of the Tennessee company syndicate, and his trust company, which was supposed to be interested in the Tennessee stock, was viciously attacked during the panic, through which it nevertheless safely passed. Besides the $5,000,000 or $6,000,000 Moore & Schley had borrowed, with the Tennessee stock as collateral, as heretofore pointed out, that firm had borrowed perhaps $27,000,000 on other securities. The formation

and existence of the syndicate holding control of the Tennessee company stock, organized by Grant B. Schley, was well known in Wall Street. Banks in New York, some of them known as Morgan banks, carrying Moore & Schley loans with the Tennessee company stock as collateral, pressed these loans vigorously. This firm continued to meet successfully all demands upon it, but finally, fearful of the result of persistent and terrific pounding, it sought and made terms with the Steel Corporation. The syndicate did not desire to sell the stock, but was forced to do so. When the Steel Corporation purchased the stock and absorbed the Tennessee company the pressure ceased and general conditions decidedly improved on the Stock Exchange. Grant B. Schley thus describes the final squeeze and the surrender:

"Senator OVERMAN. So you approached Mr. Ledyard, who was attorney for Morgan, was he not?

"Mr. SCHLEY. I don't know that he was attorney for him; he was a friend.

"Senator OVERMAN. I want to ask you whether or not you had any interest in the United States Steel Co. yourself?

"Mr. SCHLEY. Not a dollar.

"Senator OVERMAN. Did any of these gentlemen named here?

"Mr. SCHLEY. I don't think so. They may have.

"Senator OVERMAN. Were they interested as stockholders or otherwise, do you know?

"Mr. SCHLEY. I doubt it. I don't think so.

"Senator CULBERSON. Mr. Schley, I understand you to say that although calls had been made upon your firm, you had always responded up to the 4th of November, 1907?

"Mr. SCHLEY. Yes. When it developed, everyone I talked to in connection with his holdings was willing, under the pressure that was brought upon all, to sell that stock at par, and when I went to Mr. Ledyard and asked him to make these negotiations, it began. Then Mr. Frick and Mr. Gary came to me in the course of it, and it developed so that in the following days it was known to the public. I can't tell what would have happened to Moore & Schley or to anybody else in that Street, because we were oppressed by rumors, some of them untrue, but Moore & Schley were the subject of attack, serious attack, and their credit, which is the life of the business, was being destroyed. It was a matter of serious import. It had to be disposed of if it could be. I don't mean for Moore & Schley, but for people about them, others interested, not those particular individuals of great wealth.

"Senator DILLINGHAM. What was the effect of the purchase of the stock by the steel company upon the market?

"Mr. SCHLEY. It relieved the situation most decidedly, not only with M. and S. but with everybody about. The rumors were flying tremendously about, and nobody can escape those, you know. They may be true or untrue, and they affect the credit of this institution or that. It was especially so with us at that time, after this negotiation started, and it took a week. Why, there was $7,000,000 of loans called on in three days.

"Senator CULBERSON. Was it generally known on the street, as you call it, that your firm, in the relationship that you have suggested, was dealing in the Tennessee Coal & Iron?

"Mr. SCHLEY. Yes; for some time it had been talked that Moore & Schley were holding that stock—a wrongly based rumor, because these facts I tell you are absolutely true. But the pressure was there, and I don't know of any panic in a great many years when they have not been pounded a little, and other houses that have real basis behind them.

"Senator CULBERSON. You say your relationship to this stock was generally known in the Street?

"Mr. SCHLEY. Yes.

"Senator CULBERSON. And you say there was special pressure, as I remember your testimony, on your firm?

"Mr. SCHLEY. Yes." (Hearings, pp. 77, 78.)

That the Tennessee company stock was singled out appears further from the testimony of George W. Perkins, of the Steel Corporation:

"Senator OVERMAN. Why were these special securities mentioned? That was only a drop in the bucket. There were a tremendous amount of securities up.

"Mr. PERKINS. Yes, sir.

"Senator OVERMAN. Why were those securities mentioned?

"Mr. PERKINS. Why does a man call "fire" in a theater?

"Senator OVERMAN. I do not know any special reason why these stocks were mentioned.

"Mr. PERKINS. I have not the slightest idea. You never can tell why such things occur.

"Senator OVERMAN. Were these specially mentioned more than any others?

"Mr. PERKINS. At this period of the panic?

"Senator OVERMAN. Yes; these particular stocks.

"Mr. PERKINS. Yes; it became centered at that particular stage of the panic, which covered three weeks." (Hearings, p. 50.)

No bank or important banking concern or business house was saved by the transaction. It appears from the testimony of Grant B. Schley that if the $5,000,000 or $6,000,000 loans which Moore & Schley had with the several banks, with Tennessee company stock as collateral, had been cared for it would have relieved that firm, but it seems nothing less than control of the Tennessee company was considered by the Steel Corporation. (Hearings, pp. 72, 73.)

As said by a well-known writer, referring to the supposed unselfishness of the Steel Corporation in purchasing the stock of the Tennessee company, "if they checked the panic by this transaction, they did it by taking a few dollars out of one pocket and putting millions into another."

6. In his letter of November 4, 1907, to the Attorney General, the President further said: "Judge Gary and Mr. Frick inform me that * * * but little benefit will come to the Steel Corporation from the purchase." On the contrary, the property purchased is very valuable and the transaction highly beneficial to the Steel Corporation. Some of the evidence and publications upon which this conclusion is based will be stated.

Grant B. Schley testified that the facts set forth in the forty-seventh annual report of the Tennessee company for the year ending December 31, 1906, are true. The following statement from that report, except where credited to the sixth annual report of the Steel Corporation, made after the merger, is indicative of the income, sales, and earnings, improvements, output, and potential capacity of the company:

"THE TENNESSEE COAL, IRON & RAILROAD CO.

"Comparative statement of income (p. 20).

Gross profits—	
For 1904	$1,862,631.21
For 1905	2,484,139.26
For 1906	2,753,159.85
For 1907 (p. 27, U. S. S. C. Rep.)	2,749,903.73
Gross sales and earnings (p. 19)—	
For 1904	9,607,578.74
For 1905	10,951,979.02
For 1906	13,265,970.66

"New construction and development of land (pp. 24, 25).

For 1906	$1,355,632.28
For 1907 (p. 27, U. S. S. C., 6th Ann. Rep.)	6,589,116.99

"In this connection, note that the total costs of the plants of the Tennessee company, excluding land, was, on the date of this report (p. 21), $11,211,872.30, and that of the $6,589,116.99 expended for new construction in 1907 only about $72,000 was expended for land, leaving the balance of over $6,500,000 expended for enlargement of its manufacturing capacity, or an increase of about 60 per cent.

"Actual and proposed increase of output.

"As compared with previous years, your earnings may be favorably regarded, with operating profits in excess of 20 per cent on your volume of business. This result, considering the almost unlimited tonnage of your mineral reserves and their great potential value, should suggest no delay in providing the necessary facilities to meet your income opportunity. Your executive committee, recognizing the inadequacy of your present facilities, has authorized substantial expenditures to increase your volume of business and income, but further expenditures could be advantageously made (p. 7).

"But, as heretofore stated, the maximum possibilities with your present manufacturing and mining facilities are not sufficient for the most favorable results. The extensive improvements now under way, both in your mining and manufacturing departments, will greatly strengthen your operations, when completed and in running order (p. 18).

"The physical condition of your mills during the past year (steel works and rolling mills) has been improved by liberal expenditures (p. 28).

"While a general rehabilitation of old equipment has been taken care of by liberal maintenance, your executive committee have realized the necessity of increased steel and rail productive capacity, and have authorized the construction of a modern steel works and rail mill. These extensive improvements are expected to double your steel output and rail capacity and radically reduce your cost of production. The benefits expected from these additions to plant will not be operative until the last half of 1907 (p. 28).

"The same policy as applied to your steel works and rolling mills, in respect to betterments and maintenance, has also been applied in building up your blast-furnace department (p. 29).

"These extensions (iron mines and quarries) are all under way, and substantially increased production will be realized during the year 1907 (p. 30).

"UNFILLED ORDERS.

"The unfilled orders now on your books represent the largest tonnage in the history of your company. The business is well distributed and indicates broadening markets for all products. This is particularly true of coal and coke. The prospects for the future, as suggested by business on hand, shows no sign of business recession, and the outlook for the year 1907 is most encouraging (p. 37).

"*Memorandum of unfilled orders as of Jan. 1, 1907.*

	Tons.
Manufactured iron and steel products	467,114
Coal	1,200,000
Coke	201,000

(p. 37.)

"COMPARATIVE PRODUCTION.

	Tons.
Rails, billets, steel bars, and plates (p. 28):	
For 1904	155,266
For 1905	402,318
For 1906	401,882
For 1907 (p. 27, U. S. S. C., 6th Ann. Rept.)	477,624
Pig iron (p. 29):	
For 1904	475,314
For 1905	529,036
For 1906	641,837
For 1907 (p. 27, U. S. S. C., 6th Ann. Rept.)	602,827
Iron ore (p. 30):	
For 1904	1,208,038
For 1905	1,436,282
For 1906	1,483,476
For 1907 (p. 27, U. S. S. C., 6th Ann. Rept.)	1,576,757

"POTENTIAL CAPACITY. (p. 32.)

"The knowledge that your executive committee has acquired as to the tonnage and character of the iron ore, coal, and limestone owned in fee simple by your company satisfies them that, in wealth of raw materials required for the manufacture of iron and steel, your company ranks as second to only one in the world, and is far in advance of any other iron or steel producer in cost of assembling its raw materials for manufacture.

"The mineral reserves of coal and iron contained in your lands, as computed by competent authorities, are estimated to be 700,000,000 tons of iron ore and 2,000,000,000 tons of coal. Approximately one-half of your coal supply is of a superior coking quality, and your iron ore is largely of a self-fluxing character, analyzing approximately 38 per cent metallic iron. This ore is well

suited to the manufacture of high-grade foundry pig and to the production of basic pig iron for use in the manufacture of basic open-hearth steel. (p. 32.)

"The financial statement shows your company to be in a sound financial condition, with current assets of $3,004,480.09 in excess of your current liabilities. (p. 9.)

Grant B. Schley also testified that the acquisition of the Tennessee company, "added materially to the value of the steel (corporation) securities. (Hearings, p. 73)," and that in 1907 E. H. Harriman, or the Harriman railway lines, gave a large order to the Tennessee company for steel rails on account of a preference for rails of the open-hearth process of that company over rails of the Bessemer process of the Steel Corporation. (Hearings, p. 68.)

Oakleigh Thorne testified that the Tennessee company was paying a dividend of 4 per cent per annum. (Hearings, p. 38.)

George W. Perkins, a member of the finance committee of the Steel Corporation, testified that the Tennessee company property "is a very valuable property. Nobody has ever questioned that, so far as I know." (Hearings, p. 56.)

John W. Gates, a member of the Tennessee company syndicate, on November 7, 1907, gave out an interview to the daily papers in which he said: "As to the purchase of the Tennessee Coal, Iron & Railroad Co. by the United States Steel Corporation, the steel men got the best property in the country, and at a bargain price. I regard it as a sacrifice of stock worth a great deal more than the purchase price. I did not want to sell my stock, but had to follow the crowd. Had Tennessee stock been thrown on the market I would have been better off, as I could have increased my holdings at a low price. The iron ore and coal deposits of the Tennessee company are worth many times more than the entire cost of the property to the Steel Corporation."

The New York Press, of November 7, 1907, said; "The Tennessee is one of the two steel companies in the United States which manufactures open-hearth rails, now so greatly in favor with the railroads. When Harriman bought 160,000 tons of rails of the Tennessee company a few months ago, it brought the steel company to a realization that it had a strong competitor in the steel-rail field."

The New York Sun, November 7, 1907, said: "The acquisition of the (Tennessee) company is particularly advantageous to the steel corporation, because of the iron ore and coal properties that go with it. With the Great Northern and Northern Pacific ore lands acquired last year, together with previous holdings, the steel corporation now has iron-ore deposits estimated at approximately 2,400,000,000 tons, of which approximately 700,000,000 tons come with T. C. & I."

John Moody in an article in Moody's Magazine for January, 1909, said: "But the most fortunate business stroke of the steel corporation, from the viewpoint of its owners, since its organization in 1901, was the acquisition last year of the Tennessee Coal, Iron & Railroad property. The acquisition of this organization has added great potential value to the steel organization and has increased the tangible equity of its common-stock issue to a far greater extent than is commonly realized. The Tennessee Coal & Iron properties embrace, besides important manufacturing plants, nearly 450,000 acres of mineral lands in the Birmingham section of Alabama. As shown in the report of the Tennessee company in 1904, when an appraisal was made by outside parties, these lands contain approximately 400,000,000 tons of first-class low-grade ore, and more than 1,200,000,000 tons of coal, of which about one-half is coking coal. This estimate indicates that the deposits embraced are even in excess of those of the great Lake Superior properties controlled by the corporation, including the Great Northern ore bodies. This entire property was acquired, as is well known, on very favorable terms for the steel corporation, and of course puts it in a position where now it need have no concern regarding a possible future shortage of supply of either iron ore, coal, or coke. Added to this is the fact that the deposits are more favorably located than those of the Lake Superior district and will enable the company to carry on in the years to come a vast economic development of production and manufacture in this section of the country. The Tennessee ore is of a grade which is better for the making of ordinary pig iron than that of any other known deposits in this country."

The same writer, in the Public, October 16, 1908, said:

"This Tennessee coal and iron property embraces not only about 450,000 acres of mineral lands, but includes 41 developed and active iron ore and coal mines 16 large blast furnaces, the ownership of several land companies holding ex-

tensive tracts of land adjoining the several developed properties of the company, and also the Birmingham Southern Railroad Co., a terminal property of great value, connecting the various mines and plants in the Birmingham district with all the diverging trunk lines.

"The capacity of the company's blast furnaces a year ago was about 850,000 tons per annum and that of the developed coal and ore mines about 20,000 tons per day. If we compare this capacity with that of the actual production of all the other properties owned by the Steel Corporation, outside of the Tennessee Coal & Iron Co., for the year 1907, we will get the following results: Blast-furnace products, 10,819,968 tons; ore and coal mined and limestone quarried, 39,576,161 tons. In other words, the capacity of the new properties acquired, according to the figures above, is about 15 per cent of the total production of mining products of the entire corporation for last year and about 8 per cent of the blast-furnace products.

"Based on those figures alone, therefore, the purchase was an exceedingly advantageous one for the Steel Corporation, as the purchase price was only about 3 per cent of the entire present capitalization of the Steel Corporation; or, if we regard all the common stock of the Steel Corporation as water, it was but 4½ per cent of the balance of capitalization.

"But that would be only a superficial comparison.

"The possibilities of the Tennessee property and the value of its raw materials are so gigantic that even if it were producing nothing at the present time it would have been the best bargain at $45,000,000 that the Steel Corporation or any other concern or individual ever made in the purchase of a piece of property.

"The Steel Corporation, 15 months ago, entered into a lease with the Great Northern Railway interests whereby it has the right to mine at so much per ton the vast ore deposits of the Great Northern properties. The Steel Corporation agreed to pay to the Great Northern people $1.65 per ton for this ore, and transport a portion of the ore over the Great Northern tracks at a specified rate. The Great Northern ore bodies are estimated to contain about 500,000,000 tons of good ore, which, if all mined and taken by the Steel Corporation at $1.65 per ton, would make an ultimate cost to the Steel Corporation of about $850,000,000, without considering cost of transportation, etc. As stated in the Steel Corporation report for the year 1906, this contract was looked upon as a good one from the standpoint of the Steel Corporation.

"The object in giving the foregoing details is to bring out a vivid comparison of this Great Northern deal with that made last winter in the acquisition of the Tennessee Coal & Iron Co. The Great Northern properties, containing probably 500,000,000 tons of ore, will ultimately cost the Steel Corporation about $850,000,000; but the Tennessee Coal and Iron properties, which are of far more value than the Great Northern properties probably ever can be, cost the Steel Corporation only $45,000,000.

"To demonstrate the foregoing statements, let reference be had to the following from the annual report of the Tennessee Coal & Iron Co. for the year ending December 31, 1904. In that report Mr. Bacon, the chairman of the board, said:

"'Early in the summer of 1904 a committee of appraisers was appointed, representing the Sloss-Sheffield Steel & Iron Co., the Republic Iron & Steel Co., and this company, to estimate the amount and quality of the coal and iron ore owned by each company. An examination covering several months was conducted, as the result of which a report signed by every member of the committee was submitted, showing that this company owns in fee over 395,000,000 tons of red ore, of which 381,000,000 tons are graded as first class, 10,177,000 tons of brown ore, and over 1,623,000,000 tons of coal of which 809,112,000 tons are coking coal. In the coking coal is included 300,000,000 tons of Canaba coal, which is unexcelled in the South for steam and domestic purposes, and commands the highest market price of any grade of coal in the district. The men in charge of our iron mines estimate the holdings of iron ore of the company to be still larger, viz, of first-class red ore, over 450,000,000 tons; of second-class red ore, over 95,000,000 tons; and of brown ore, 16,900,000 tons.'

"From the above it will be seen, figuring the first-class ore at as low an amount as $1 per ton, that the valuation for that alone is $395 000,000. 'If we disregard the aggregate estimate of coal and simply take the estimate for coking coal at as low a figure as 50 cents per ton, we get a valuation of $400,000,000 more. A very conservative estimate of the values of the ore and coal deposits of the Tennessee Coal & Iron Co. at the present time is hardly less, in all probability, than $1,000,000,000.

"Now, as far back as 1901, Mr. Schwab made the statement that the coking coal deposits of the Steel Corporation were of vast value, because of the fact that coking coal of the kind needed for blast furnaces was rapidly growing scarce, and that in a few years there would probably be no more. He disregarded the Tennessee properties, undoubtedly, but by this great acquisition the Steel Corporation has been put in a position where it need have no concern for the future as far as coking coal is concerned. In fact, the acquisition of the Tennessee Coal & Iron Co., aside from being a business stroke of enormous direct profit, has had the effect of rounding out and completing the control by the corporation of the ore and coking-coal supplies of the country.

"That acquisition is of more value to the Steel Trust, and will be in the future in many ways, than its holdings of Lake Superior ores, both because of location and because of general character and quality of the deposits.

"It is well known that the Tennessee iron-ore deposits are the best in the world for making pig iron; and the cost of production and manufacture of iron products in that section is considerably less than is the case in the Great Northern ore bodies. Therefore it can be easily demonstrated that the acquisition of this property for $45,000.000 added an almost unheard-of value to the equity back of the Steel Corporation stocks.

"Many people have wondered and are still wondering why, in the face of temporarily poor earnings and in the face of tariff agitation, the Steel Corporation stocks, both common and preferred, have been steadily rising since last December. and are now almost at the highest figures of their history. The foregoing demonstration certainly accounts for it.

"If it were not for the danger involved in tariff agitation, the Steel Corporation common stock would probably be selling to-day at nearly double its present value. In other words, instead of having a market price of $45 per share, a total market value of about $220,000,000, it would be selling in the neighborhood of $90 per share, with a total market value of $450,000,000. It could easily reach this point in spite of the fact that the corporation may not pay any larger dividends for several years to come.

"The appraised value in 1904 of the Tennessee company's properties, as quoted above, was that of a thoroughly impartial and unanimous board. This appraisal must have been known to Mr. Morgan and the rest of his party when the property was taken over by the Steel Trust at the absurdly low price they paid. If they checked the panic by this transaction, they did it by taking a few dollars out of one pocket and putting millions into another."

Frank A. Munsey, in an article in Munsey's Magazine for June, 1908, who stated that the inventory was compiled through the courtesy and with the assistance of the Steel Corporation, said:

"The Tennessee Coal & Iron Co. is entered as a separate item in this inventory. Its ore and coal and mills and furnaces and other properties are not included in the other classifications. This company is put in at an estimated value of $50,000,000, which is somewhat more than the Steel Corporation paid for it, but probably a much smaller sum than it is worth to the Steel Corporation. Its chief value lies in its coal and ore properties. Its ore is estimated at 700,000,000 tons. It is not as high-grade ore as the northern ore, but assuming that it is worth 15 cents per ton, it alone would amount to $105,000,000. Its coal is estimated at about a billion tons, which, at 10 cents a ton, would be $100,000,000. From the fact that the known supply of ore in the country is limited, it may be worth two or three times this price. There is no way of telling just what it is worth. But as a guide to the value of ores, we may take the price fixed upon for the Great Northern ores between James J. Hill and the Steel Corporation. The Great Northern Railroad and the Northern Pacific had vast holdings of iron ore in the Messabe Range, and after many months of negotiation the Steel Corporation entered into a contract a year ago to take all this ore at a certain price per ton, the price to be advanced each year over the preceding year 3.4 cents. The first year's price, which covered the year 1907, was 85 cents a ton. This year it is 88.4 cents a ton. On this basis the price will soon be over a dollar a ton, and the average cost for the entire supply will be considerably in excess of that figure. And this ore is supposed to be of a lower grade, as a whole, than the ore owned by the United States Steel Corporation, which in this inventory has been conservatively—ultraconservatively—figured at 60 cents a ton. If the Hill ore is worth over a dollar a ton, the ore of the Steel Corporation is worth quite as much, and even more, as it is of a better grade. And these prices of this Northern Pacific ore have an important bearing on the ore properties of the Tennessee Coal & Iron Co. I should think that Mr. Charles M. Schwab is as good an authority as there is in the world on the

value of iron ore. He said to me two or three days ago that the ore holdings of the Steel Corporation were easily worth a dollar a ton, and, in fact, might safely and conservatively be regarded as worth still more, for the reason that they can not be duplicated."

Judge E. H. Gary, of the Steel Corporation, in his testimony before the Ways and Means Committee of the House of Representatives in 1908, thus referred to this Munsey article:

"This is the result of an independent examination by Mr. Munsey concerning the value of our properties. He gives the properties in detail and his valuation, and if anything I would say that it is a little too high, but it is not very much too high, and certainly properties could not be reproduced for anything like that; in fact, it would be impossible to reproduce them at any price, perhaps, some of them." (Tariff Hearings, p. 5496.)

But the Steel Corporation, in its corporate capacity, is on record as to this property. In the Sixth Annual Report of the United States Steel Corporation for the year ending December 31, 1907, the holdings of the Tennessee company which were acquired are given as follows (pp. 26, 27):

"Surface and mineral rights acreage of iron ore, coal, and limestone property, owned in fee, 447,423, distributed as follows: In Alabama, 340,263 acres; in Tennessee, 105,740 acres; in Georgia, 1,420 acres. Upon this property there were in operation in the State of Alabama, near Birmingham, 13 active iron-ore mines, with 2 under construction; and at Greeley, 3 active iron-ore mines. In Georgia there were 2 active iron-ore mines in operation.

"In Alabama there were in operation 22 active coal mines and 2,800 coke ovens; in Tennessee, 1 coal mine and 174 coke ovens.

"There were 2 active quarries, 1 inactive, and 1 in course of development, all in Alabama.

"There were 14 active blast furnaces in Alabama; 2 in Tennessee.

"All mills, foundries, machine shops, etc., were located at Ensley and Bessemer, Ala., near Birmingham.

"The Tennessee company owned the capital stock of the Birmingham Southern Railway Co., a terminal railroad connecting the various mines and plants of the company in the Birmingham district, consisting of 31.16 miles of main and branch lines, 1 mile second track, 67.78 miles yard and siding tracks; 35 locomotives, and 725 cars of all descriptions.

"The Tennessee company owned the entire issued capital stock of the Tennessee Land Co., the Booker Land Co., and a controlling interest in the stock of the Ensley Land Co.—these companies owning various tracts of land adjoining the several properties of the Tennessee company.

"The net profits of the Tennessee company for the year 1907, after charging off $437,666.84 for depreciation and extraordinary replacements, and $885,552.31 for net interest charge on bonded and floating debt, were $1,426,684.58 (a little more than 4½ per cent on the capital stock).

"The company spent, during 1907, for extensions, additions, and betterments, the sum of $6,589,116.99."

At page 29 of this report the following is found:

"In November, 1907, the corporation acquired a majority of the common stock of the Tennessee Coal, Iron & Railroad Co., as is set forth in detail on page 25 of this report. The purchase was made during the financial panic of October, 1907. The parties owning or controlling a majority of the Tennessee company's stock offered the same to the corporation on terms which were satisfactory, both as to price and manner of payment. The purchase of the property promises benefit to the corporation and also aided promptly and materially in relieving the financial stress at the time existing. The Tennessee property is very valuable. Its mineral resources are large. The location of the iron ore and coal deposits in the immediate proximity of the manufacturing plants enables the production of iron at reasonable cost. It is believed the lines of business of the Tennessee company can be materially extended. During the last two years about $6,250,000 were expended in rehabilitating, modernizing, and enlarging the furnaces and steel plant. Additional expenditures of considerable magnitude in 1908 are contemplated to complete the plans for improvments which were under way when the corporation acquired the property. It is believed that when these improvements and extensions shall have been completed and the operating management perfected, the business of the company will be profitable."

In this connection it is appropriate to invite attention to the testimony of Mr. Charles M. Schwab, ex-president of the Steel Corporation, before the Ways

and Means Committee of the House of Representatives in 1908. In substance, Mr. Schwab testified (Tariff Hearings, p. 4915) that in Germany pig iron could be produced at from $9.50 to $12 per ton as against $14 to $14.50 in the United States; that in England it could be produced a little cheaper than in Germany; and that he was positive the cost of pig iron in Birmingham was less than the cost in England; and that the cost of converting pig iron into steel rails was about the same in Germany, England, and Birmingham. If this be true, and Mr. Schwab's testimony is clear and emphatic, the Tennessee company has a natural advantage of from $4.50 to $5 a ton in the production of steel rails over any other portion of the United States, since the proximity at Birmingham of all the elements for the production of pig iron justifies the inference that the average cost there is no more than the minimum cost in Germany or England, viz, $9.50 per ton.

Mr. Schwab, in the course of his examination before the House committee, said:

"For example, I know that pig iron can be produced in different parts of Germany at from $9.50 to $12 a ton to-day, depending upon the location and character of the pig.

"The CHAIRMAN. Against $14 here?

"Mr. SCHWAB. About $14 to $14.50 here.

* * * * * * *

"The CHAIRMAN. That is in Germany. How about England?

"Mr. SCHWAB. England is probably a little cheaper, though it is not widely different.

"The CHAIRMAN. What is the main reason for the additional cost of the pig iron here?

"Mr. SCHWAB. Raw material and freights being higher.

"The CHAIRMAN. Their iron is nearer the coal mines?

"Mr. SCHWAB. Yes. They assemble it cheaper than we do.

"The CHAIRMAN. I do not suppose they do it any cheaper than we can at Birmingham?

"Mr. SCHWAB. No; we do it cheaper in Birmingham than they do in England.

"The CHAIRMAN. You think the cost of pig iron in Birmingham would be less than the cost in England?

"Mr. SCHWAB. I know it would be.

"The CHAIRMAN. The cost of converting the steel is about the same?

"Mr. SCHWAB. In Birmingham it is about the same."

At page 4899 of the hearings Mr. Schwab testified that iron ore in the ground was worth $1 per ton. He said:

"I would call attention to the fact that since that time (1901 or 1902) ores have not only been sold at a loss at a dollar a ton, but the lowest grade we have."

Another important factor entering into the potential capacity of the Tennessee company is the proximity of the iron ore, coal, and limestone holdings to each other and to the plants, and the consequent saving of transportation charges. The bulk of these holdings is in the State of Alabama (p. 26, 6th Ann. Rep. U. S. Steel Corp.), within a radius of 30 miles, and Judge Gary, in reference to this, testified before the Ways and Means Committee in 1908 (pp. 5471, 5472):

"Mr. RANDELL. Is it not a fact that iron and coal are well situated with reference to each other in the United States in comparison to other countries:

"Mr. GARY. So far as the Birmingham district is concerned, yes; but not so far as the other districts are concerned. They are remote one from another as compared with England and Germany.

* * * * * * *

"Mr. RANDELL. You have your furnaces where there is neither coke, coal, nor iron ore?

"Mr. GARY. That is right.

"Mr. RANDELL. Everything has to be hauled to you?

"Mr. GARY. I am not speaking of the Birmingham district."

The report of the National Conservation Commission, attached to the President's message of January 22, 1909 (Cong. Rec., 60th Cong., 2d sess., p. 1297), under the head of "Minerals," contains the following:

"The known supply of high-grade iron ores in the United States approximates 3,840,000,000 tons, which at the present increasing rate of consumption can not be expected to last beyond the middle of the present century."

If, then, the United States Steel Corporation now owns and controls 2,400,000,000 tons of high-grade iron ore, as has been estimated, it has 62½ per cent of the total supply of the country. If this corporation acquired 700,000,000 tons of iron ore with the Tennessee company, it added to its then estimated holdings of 44 per cent of the iron-ore supply 18½ per cent, giving it, as stated, control of 62½ per cent of the iron-ore supply of the United States.

The purchase of this 700,000,000 tons of iron ore from the Tennessee company, increasing the Steel Corporation's holdings of ore more than 40 per cent, created that "future monopoly" in ore and "commanding position in trade" to which Judge Gary testified before the Ways and Means Committee.

The steel corporation, it is admitted, now practically controls the ultimate ore supply of the United States. In the tariff hearings before the Ways and Means Committee of the House in 1908, Judge Gary, of the Steel Corporation, testified:

"Mr. COCKRAN. You practically do control the ore supply of the country?

"Mr. GARY. No; not now; not for the immediate future.

"Mr. COCKRAN. Well, the ultimate supply?

"Mr. GARY. Yes; I think so; that is, pretty nearly. It is not absolute control." (Hearings, p. 5515.)

To sum the matter up briefly, we think the property is very valuable, worth probably several hundred million dollars, and that among the larger benefits which the Steel Corporation derives from the merger are the control of the open-hearth output of steel rails, the ultimate control of the iron-ore supply of the country, the practical monopoly of the iron and steel trade of the South, and the elimination of a strong and growing competitor.

The following conclusions of law are submitted:

1. Unless the merger under consideration contravened some Federal law it is a private affair or a matter for the States in which the companies were chartered. Assuming, therefore, for present purposes, that the absorption of the Tennessee company by the United States Steel Corporation was in violation of the act of Congress approved July 2, 1890, commonly known as the Sherman antitrust law, we are of the opinion that the President was not authorized to permit the absorption. The proposition is self-evident, needing neither argument nor judicial authority to support it, for manifestly the President is without authority to annul or suspend a law or to direct its nonenforcement either generally or in a particular case. The principle involved, in its broadest sense, is inherent in our form of government and is essential to the preservation of the rights and liberties of the people. This view is strengthened, if such were necessary, by the fact that the President is the one official who is by the Federal Constitution expressly enjoined to "take care that the laws be faithfully executed." Whatever may be the supposed emergency, no discretion is lodged in the President as to the enforcement of the law. This is a government of law and not of men, of law universal in its application, as to which none or immune. It is imperative that this principle be preserved in such a case as this, lest in time we revive the despotic prerogative of kings to create and license monopolies.

(See Senator Nelson's Report 848, on the antitrust law, 60th Cong., 2d sess., pp. 5, 9, et seq.)

"No man is above the law and no man is below it; nor do we ask any man permission when we require him to obey it.

"Obedience to the law is demanded as a right, not asked as a favor." (The President's message of December 7, 1903.)

In our judgment the President was equally unauthorized to direct the Attorney General, as we believe he did in effect, not to interfere and not to enforce the law in this instance. Section 4 of the antitrust act of 1890 provides:

"The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to restrain and prevent such violations."

As construed by the Supreme Court of the United States, the entire authority to execute the antitrust statute in the interest of the public is vested in the Attorney General. (Minnesota *v.* Northern Securities Co., 194 U. S., 71.)

The duty of that official in this respect is the creation of the statute, of the law, and the President can not subtract from it. When a case falls within the condemnation of the antitrust act, as is believed this case does, it is made the

duty of the Attorney General to institute proceedings, and the President can not absolve him from its performance.

The general proposition was thus expressed by Attorney General Crittenden in 1851:

"As a general proposition, it appears to me most judicious for the President, as well as more consistent with the form and spirit of our institutions, to forbear from interference with the functions of subordinate public officers and to leave them to the discharge of their proper duties under all their legal responsibilities, and subject also to removal from office for neglect or abuse of their official trust." (5 Ops. Atty. Gen., 587.)

Far more specific are other authorities. In 1854 Attorney General Cushing said:

"When the laws define what is to be done by a given head of department, and how he is to do it, there the President's discretion stops." (6 Ops. Atty. Gen., 341.)

In 1890 Attorney General Miller stated the rule clearly and strongly:

"In short, the statutes do not contain any such provision as would authorize or justify the President in making such an order as is asked. Nor does any such authority inhere in the executive office. The President has, under the Constitution and laws, certain duties to perform, among them being to take care that the laws be faithfully executed; that is, that the other executive and administrative officers of the Government faithfully perform their duties, and he has no more power to add to or subtract from the duties imposed upon subordinate executive and administrative officers by the law than those officers have to add to or subtract from his duties." (19 Ops. Atty. Gen., 686.)

Chief Justice Marshall, speaking for the Supreme Court of the United States in a celebrated case, announced the same doctrine:

"He is to affix the seal of the United States to the commission and is to record it. This is not a proceeding which may be varied if the judgment of the executive suggests one more eligible, but is a precise course marked out by law and is to be strictly pursued. It is the duty of the Secretary of State to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts in this respect, as has been very properly stated at the bar, under the authority of law and not by the instructions of the President. * * * But where he [the head of a department] is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the President, and the performance of which the President can not lawfully forbid * * * it is not perceived on what ground the courts of the country are further excused from the duty of giving judgment that right be done to an injured individual." (Marbury *v.* Madison, 1 Cranch, 158, 171.)

Kendall *v.* United States (12 Pets., 524) was an action for mandamus against the Postmaster General to compel the payment of an award made under an act of Congress by the Solicitor of the Treasury to the petitioners, payment having been refused by the Postmaster General. Before instituting the action for mandamus the petitioners presented a memorial to Congress regarding the nonpayment, which was investigated by the Judiciary Committee of the Senate, who found that the law compelling the payment was plain and recommended the adoption of the following resolution by the Senate: "That the Postmaster General is fully warranted in paying, and ought to pay," etc., "the amount of the award of the Solicitor of the Treasury," which was unanimously adopted by the Senate. Upon a further refusal of payment by the Postmaster General, this action was brought. Mr. Justice Thompson, for the court, in the course of the opinion, said (p. 610):

"The executive power is vested in the President; and as far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in the mode prescribed by the Constitution through the impeaching power. But it by no means follows that every officer in every branch of that department is under the exclusive direction of the President. * * * But it would be an alarming doctrine that Congress can not impose upon any executive officer any duty they may think proper which is not repugnant to any rights secured and protected by the Constitution; and in such cases the duty and responsibility grow out of and are subject to the control of the law and not to the direction of the President."

After citing the report of the Judiciary Committee of the Senate upon its investigation of the refusal to pay, and the passage of the resolution quoted

above as evincing the plain intent of Congress in the passage of the act, the court say further (p. 612):

"It was urged at the bar that the Postmaster General was alone subject to the control and direction of the President, with respect to the execution of the duty imposed upon him by this law; and this right of the President is claimed as growing out of the obligation imposed upon him by the Constitution to take care that the laws be faithfully executed. This is a doctrine that can not receive the sanction of this court. It would be vesting in the President a dispensing power which has no countenance for its support in any part of the Constitution, and is asserting a principle which, if carried out in its results to all cases falling within it, would be clothing the President with a power entirely to control the legislation of Congress and paralyze the administration of justice.

"To contend that the obligation imposed on the President to see the laws faithfully executed implies a power to forbid their execution is a novel construction of the Constitution and entirely inadmissible."

Mr. Justice Miller, speaking for the Supreme Court, said:

"We have no officers in this Government, from the President down to the most subordinate agent, who does not hold office under the law with prescribed duties and limited authority." (The Floyd's acceptances, 7 Wallace, 676.)

2. The absorption of the Tennessee Coal, Iron & Railroad Co. by the United States Steel Corporation, in our opinion, was in violation of the act of Congress approved July 2, 1890, well known as the Sherman antitrust law.

The United States Steel Corporation is the greatest combination of capital in the country. It was organized in 1901 by combining the following companies, with the respective amount of stock and bonds of each company:

The Carnegie Co	$320,000,000
The Federal Steel Co	126,600,000
National Tube Co	80,000,000
American Bridge Co	61,000,000
Lake Superior Consolidated Mines	34,700,000
American Steel & Wire Co	95,700,000
National Steel Co	63,400,000
American Steel Hoop Co	33,000,000
American Tin Plate Co	46,300,000
American Sheet Steel Co	51,000,000
Total stock and bonds acquired	911,700,000

These figures are taken from circulars issued by J. P. Morgan & Co., the syndicate managers of the organization.

In exchange for these stocks and bonds there were issued stocks and bonds of the United States Steel Corporation as follows:

Preferred stock	$497,400,000
Common stock	495,800,000
Bonds	304,000,000
Or a total of	1,297,200,000
Leaving in the hands of the syndicate	106,800,000
Or a total capitalization of	1,404,000,000

In 1908 Judge Gary, in his testimony before the Ways and Means Committee, admits that there were issued $400,00,000 more of stocks and bonds than the selling price of the stocks and bonds acquired. (Tariff Hearings, p. 5520.)

At the time of the consolidation of the above properties in 1901 their total stocks and bonds were $954,000,000 and their total annual products 11,431,000 tons. The capital stock and bonds of their competitors aggregated about $454,500,000, and annual products about 9,663,000 tons. (Compiled from data in Iron Age of December 27, 1900.) Since that date it is known the Steel Corporation has absorbed of these competitors the Union-Sharon Steel Co., with capitalization of $45,000,000 (1st Ann. Rept., p. 19); the Shelby Steel Tube Co., with capitalization of $15,000,000; and the Tennessee Coal, Iron & Railroad Co., with capitalization of $30,000,000.

The total capitalization of the Steel Corporation and the fact of combination in the original organization are shown by the following:

Judge Gary testified before the Ways and Means Committee in 1908 (Tariff Hearings, p. 5500):

"The capitalization would be $480,199,000 of bonds of all classes, $360,381,100 of preferred stock, and $508,302,500 of common stock. * * * And then the

subsidiary companies have bonded indebtedness, $125,346,000 (total, $1,474,028,000)."

Further (Tariff Hearings, p. 5509):

"Mr. COCKRAN. That company (United States Steel Corporation) was a combination of several other companies?

"Mr. GARY. That company acquired by purchase properties belonging to these other corporations at a certain price, namely, the amount of their stock and bonds.

"Mr. COCKRAN. And those companies which it purchased were themselves consolidations of several other companies, were they not?

"Mr. GARY. Some of them were at least.

"Mr. COCKRAN. The Federal Steel Co. was?

"Mr. GARY. Yes.

"Mr. COCKRAN. The American Bridge Co. was?

"Mr. GARY. Yes."

Pursuing this line of examination, Mr. Cockran drew admissions from the witness that besides the companies mentioned in the testimony quoted above, the following companies were also absorbed: The Steel & Wire Co., the National Tube Co., the Tin Plate Co., the Illinois Steel Co., the Lorraine Steel Co., the Minnesota Iron Co.

Figures compiled from data given in the Iron Age, The Age of Steel, and other trade journals, as well as testimony before the Industrial Commission, indicate that the companies included in the new corporation produced, of the total amount manufactured each year in the United States, 52 per cent of iron ore, 54 per cent of coke, 49 per cent of pig iron, 60 per cent of steel, 67 per cent of steel rails, 60 per cent of finished iron and steel products, 63 per cent of wire rods, 94 per cent of wire, 95 per cent of wire nails, 94 per cent of tubes and pipes, 95 per cent of tin plate, 85 per cent of bridges, all woven and barbed wire (because owners of patents), and 66 per cent of the copperas.

It appears that at the time of the merger of the Tennessee company, in 1907, this percentage of the total output of the Steel Corporation had been lessened by the growth and operation of independent companies, among them the Tennessee company. George W. Perkins testified before the subcommittee:

"The CHAIRMAN. Do you know what relative proportion of the total output going into the commerce of the country and in its lines was then being produced by the United States Steel Corporation?

"Mr. PERKINS. You mean what percentage, say, of 100 per cent of the total output?

"The CHAIRMAN. Yes.

"Mr. PERKINS. No, sir; but my belief is that it was a smaller percentage of the total than the percentage that existed at the time the Steel Corporation was organized.

"The CHAIRMAN. You think, then, relatively, the independent producers at that time had increased their output?

"Mr. PERKINS. That is my impression." (Hearings, p. 43.)

This general fact is also stated in the letter of the President to the Attorney General, November 4, 1907, and when considered in connection with the whole situation, particularly the wealth of raw materials of the Tennessee company, its advantage over every other company in assembling them for manufacture and distribution, and the doubling of its steel-producing capacity, it assists in explaining the willingness of the Steel Corporation to pay 20 per cent more than the market quotation for the Tennessee company stock. It was shown by testimony before the subcommittee that the improvements contemplated and authorized by the Tennessee company would double its steel output and rail capacity; that in wealth of raw materials required in the manufacture of iron and steel the company was second only to the Steel Corporation; and that it was far in advance of any other iron or steel producer in cost of assembling its raw materials for manufacture.

The monopolistic powers of the Steel Corporation, which were greatly enhanced by this merger, are indicated by the following testimony before the Ways and Means Committee in 1908:

POWER OF UNITED STATES STEEL CORPORATION TO FIX PRICES OF STEEL AND DRIVE COMPETITORS OUT OF THE MARKET.

Tariff Hearings, 1908, page 5470:

"Mr. GARY. I think, with reductions in the tariff, the United States Steel Corporation would endeavor to take care of itself; but I think many, if not

most, of our competitors would soon be out of business, and we would have the field."

Tariff Hearings, page 5491:

"Mr. CLARK. If you want to; that is, if the United States Steel Corporation wants to fix the price of steel rails in this country at a given figure, have you not such a hold on these independent operators that not a single solitary one of them would dare to mark under your price?

"Mr. GARY. I think, as applied to steel rails, that is probably true."

Tariff Hearings, page 5492:

"Mr. CLARK. Have you not such a hold on the American market that you could immediately mark yours down to $20 or $25 long enough to put that fellow clear out of business, and then mark yours up again to where you wanted it?

"Mr. GARY. Quite likely; that may be true. I will not say that is not true. I will not say that in the competition we could not drive a good many of our competitors out of business."

Tariff Hearings, page 5515:

"Mr. GARY. We have competitors, you know, who are just as able to take care of themselves as we are, perhaps, particularly in some lines; but I do believe large numbers would be driven out of business if we were willing to drive them out, either because we thought it was right to do so or good policy to do so.

"Mr. GARY. I think we have the commanding position in the trade, and I believe we recognize our responsibility to all on account of that position.

* * * * * * *

"Mr. COCKRAN. You practically do control the ore supply of the country?

"Mr. GARY. No; not now; not for the immediate future.

"Mr. COCKRAN. Well, the ultimate supply?

"Mr. GARY. Yes; I think so—that is, pretty nearly. It is not absolute control."

CAPACITY OF UNITED STATES STEEL CORPORATION TO MANUFACTURE IRON AND STEEL CHEAPER THAN ANY OF ITS COMPETITORS.

Tariff Hearings, page 5452:

"The CHAIRMAN. State whether you can produce it cheaper than your rivals in business.

"Mr. GARY. Yes; I think we can. We certainly can at a large number of our furnaces. I think there is no doubt that we can produce iron and steel materially cheaper than most of our competitors.

"The CHAIRMAN. Materially? How much? Take pig iron, for instance.

* * * * * * *

"Mr. GARY. I think on the average. Of course anyone hesitates to speak about a competitor, but I would not hesitate to say, in my opinion, at least $1 a ton.

"The CHAIRMAN. Cheaper than your competitors?

"Mr. GARY. Yes, sir."

Further examined along this line, he said (Tariff Hearings, p. 5453):

"The CHAIRMAN. Give us your best judgment, Judge. You say not less than a dollar?

"Mr. GARY. I would rather not guess any further than that.

"The CHAIRMAN. Would it be safe to say $2?

"Mr. GARY. Not on the basis of manufacturing cost, I think. Of course, I am not speaking from the standpoint of the corporation, Mr. Chairman—from the standpoint of the corporation, which has a decided advantage in the quantity and quality of its ores and in owning its transportation companies to carry the ores to the Lakes, and its transportation facilities on the Lakes, and all that sort of thing. The advantage to the corporation is very much more; very much more than that.

"The CHAIRMAN. Very much more than a dollar?

"Mr. GARY. Oh, yes; very much more.

"The CHAIRMAN. Is the entire difference more than $2?

"Mr. GARY. Take an item of rails, for instance——

"The CHAIRMAN. No; let us keep to pig iron.

"Mr. GARY. All right. I think it is possibly more than $2, Mr. Chairman.

"The CHAIRMAN. You think it is more than $2?

"Mr. GARY. Yes; I think it is. I think there is no doubt it is more than that.

"The CHAIRMAN. You think there is no doubt it is more than $2?
"Mr. GARY. Yes."

Under the facts set out in this report, the absorption appears to have been contrary to the provisions of the antitrust law. Both companies, as we have said, were engaged in interstate commerce. They not only manufactured iron and steel, but sold, transported, and distributed their products among the several States of the United States. The transaction appears to be within the prohibition of the Federal statute.

Addyston Pipe Co. *v.* United States, 175 U. S., 211; Northern Securities Co. *v.* United States, 193 U. S., 197; Swift *v.* United States, 196 U. S., 375; Loewe *v.* Lawler, 208 U. S., 274; Pennsylvania Sugar Refining Co. *v.* American Sugar Refining Co., circuit court of appeals, second circuit (Dec. 15, 1908); United States *v.* American Tobacco Co. (S. Doc. 646, 60th Cong., 2d sess.); Continental Wall Paper Co. *v.* Voight (Sup. Ct. U. S., Feb. 1, 1909).

Among other things, the effect and purpose of the purchase and absorption of the Tennessee company were to monopolize the iron-ore supply of the country for manufacture, sale, and distribution among the several States, and generally to eliminate the Tennessee company as a competitor in the manufacture, sale, and distribution of iron and steel products among the several States. But complete monopoly of the iron and steel business is not necessary to bring the case within the condemnation of the statute. The general principle is thus stated by Chief Justice Fuller:

"Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition." (United States *v.* Knight, 156 U. S., 1.)

In the case of the Waters-Pierce Oil Co. *v.* The State of Texas, decided January 18, 1909, the Supreme Court of the United States, in an able opinion of Mr. Justice Day, reaffirmed this principle:

"In United States *v.* Knight (156 U. S., 1) this court said: 'Again, all the authorities agree that in order to vitiate a contract or combination it is not essential that its result be a complete monopoly. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from a free competition.' This language was quoted with approval in the Addyston Pipe Co. case (175 U. S., 237). And in the Northern Securities case (193 U. S., 197), while the Sherman Act directly condemned conspiracies and combinations in restraint of trade or monopolizing or attempting to monopolize the same, this court said (p. 332):

"'That to vitiate a combination such as the act of Congress condemns it need not be shown that the combination in fact results, or will result, in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition.'"

Special attention is invited to the case of the United States *v.* The American Tobacco Co., supra. It involved the validity of the absorption of various independent companies by the American Tobacco Co. and was tried before four circuit judges on the certificate of the Attorney General under the act of February 11, 1903. The case was decided November 7, 1908, three of the judges, in separate opinions, declaring the absorption illegal. All of these opinions are interesting and able, but it will suffice to quote from that of Circuit Judge Lacombe:

"The act of July 2, 1890, in its first section declares to be illegal 'every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations.' That declaration, ambiguous when enacted, is, as the writer conceives, no longer open to construction in the inferior federal courts. Disregarding various dicta and following the several propositions which have been approved by successive majorities of the Supreme Court, this language is to be construed as prohibiting any contract or combination whose direct effect is to prevent the free play of competition, and thus tend to deprive the country of the services of any number of independent dealers, however small. As thus construed the statute is revolutionary. By this it is not intended to imply that the construction is incorrect. When we remember the circumstances under which the act was passed, the popular prejudice against large aggregations of capital, and the loud outcry against combinations which might in one way or another interfere to suppress or check the full, free, and wholly unrestrained competition which was

assumed, rightly or wrongly, to be the very "life of trade," it would not be surprising to find that Congress had responded to what seemed to be the wishes of a large part, if not the majority, of the community and that it intended to secure such competition against the operation of natural laws.

"The act may be termed revolutionary because before its passage the courts had recognized a 'restraint of trade,' which was held not to be unfair, but permissible, although it operated in some measure to restrict competition. By insensible degrees, under the operation of many causes, business manufacturing and trading alike has more and more developed a tendency toward larger and larger aggregations of capital and more extensive combinations of individual enterprise. It is contended that, under existing conditions, in that way only can production be increased and cheapened, new markets opened and developed, stability in reasonable prices secured, and industrial progress assured. But every aggregation of individuals or corporations, formerly independent, immediately upon its formation terminates an existing competition, whether or not some other competition may subsequently arise. The act, as above construed, prohibits every contract or combination in restraint of competition. Size is not made the test. Two individuals who have been driving rival express wagons between villages in two contiguous States, who enter into a combination to join forces and operate a single line, restrain an existing competition, and it would seem to make little difference whether they make such combination more effective by forming a partnership or not.

"Accepting this construction of the statute, as it would seem this court must accept it, there can be little doubt that it has been violated in this case. The formation of the original American Tobacco Co., which antedated the Sherman Act, may be disregarded. But the present American Tobacco Co. was formed by subsequent merger of the original company with the Continental Tobacco Co. and the Consolidated Tobacco Co., and when that merger became complete two of its existing competitors in the tobacco business were eliminated.

"What benefits may have come from this combination or from the others complained of it is not material to inquire, nor need subsequent business methods be considered nor the effects on production or prices. The record in this case does not indicate that there has been any increase in the price of tobacco products to the consumer. There is an absence of persuasive evidence that by unfair competition or improper practices independent dealers have been dragooned into giving up their individual enterprises and selling out to the principal defendant. In this connection interesting testimony is given by one of the Government's witnesses. The deponent was for many years an independent dealer and secretary of the Independent Tobacco Manufacturers' Association. He testified:

"'My business was conducted by me alone; I had no partner, no corporation. It had got to be a large business, and if anything happened to me, there was no one there to continue it. The value of the business was in a brand, and I became fearsome what would happen to it if I would be disabled in any way. It would not be much value to my estate unless some one had a knowledge of the business and knew how to manage it, and then I believe there was a maximum business, beyond which you can not conduct it profitably personally. It will get so big that it requires an organization. And then, too, I was only identified as a scrap-tobacco manufacturer, and, going by precedent, the consuming public of tobacco changes every 10, 12, or 15 years, and I have figured that might happen again and it wouldn't use scrap tobacco and might use something else, and then I would not have much business, I thought. Whereas the American Tobacco Co. had been in conference with me—I knew the officers—and I made up my mind when a proper proposition was made to me, such as was satisfactory to me, I would be very anxious to affiliate myself with a good, big tobacco organization, large enough and strong enough to take care of all conditions that might come up. I was not induced to sell out by a decrease of profits or by any unfair competition. I never had any fear they could drive me out of business.'

"During the existence of the American Tobacco Co. new enterprises have been started—some with small capital, in competition with it, and have thriven. The price of leaf tobacco—the raw material—except for one brief period of abnormal conditions, has steadily increased, until it has nearly doubled, while at the same time 150,000 additional acres have been devoted to tobacco crops, and the consumption of the leaf has greatly increased. Through the enterprise of defendant and at large expense new markets for American tobacco have been opened or developed in India, China, and elsewhere. But all this is imma-

terial; each one of these purchases of existing concerns, complained of in the petition, was a contract and combination in restraint of a competition existing when it was entered into, and that is sufficient to bring it within the ban of this drastic statute.

"A large part of the record is taken up with testimony as to concealment of the relations existing between some of the defendants. It is difficult to see what bearing this has on the question in controversy. If an agreement by a corporation to acquire a majority of the stock of a competing corporation is obnoxious to the statute, its vice is certainly not eradicated by the promptest publicity. If, on the other hand, such an agreement is innocent, it does not become guilty merely because the parties to it keep their own counsel about their mutual transactions.

"It is contended that the case at bar is not within the statute since the various combinations complained of deal primarily with manufacture, and U. S. *v.* Knight (156 U. S., 1) is cited in support of that proposition. It seems to the writer, however, that subsequent decisions of the Supreme Court have modified the opinion in that case, and that the one at bar is as much within the statute as was the combination condemned in Loewe *v.* Lawler (208 U. S., 274)."

It follows from what has been said that we think the resolution should be answered that, in the judgment of the committee, the President was not authorized to permit the absorption of the Tennessee company by the steel corporation.

A. B. KITTREDGE.
LEE S. OVERMAN.
ISIDOR RAYNER.
C. A. CULBERSON.

VIEWS OF MR. BACON.

Under the facts narrated and the authorities cited in the foregoing report, it is my opinion that the absorption of the Tennessee Coal & Iron Co. by the United States Steel Corporation was in violation of the existing laws of the United States, and no officer of the United States has authority to countenance or to even negatively sanction such violation of law.

In view, however, of the fact that the Constitution devolves upon the Senate the duty of hearing and determining any charges alleged against the President, which may be preferred in the manner prescribed by the Constitution, it is my opinion that, while the Senate might commend or approve any act of the President, it would be improper for the Senate in the absence of charges thus preferred, and a legal trial thereon, to express by resolution or otherwise its judgment of condemnation relative to any alleged official misconduct on the part of the President.

For this reason my view is that the expression of the opinion of the committee to the Senate should be limited to the above statement.

A. O. BACON.

VIEWS OF MR. NELSON.

In my opinion the absorption of the Tennessee Coal & Iron Co. by the United States Steel Corporation was clearly in violation of the antitrust law. I am further of the opinion that such absorption ought not to have been tolerated by the Government, but I believe the President was mislead into taking the course he did take by the representations made to him, that the absorption was necessary in order to stay and allay the financial panic then prevailing, and that, but for his belief in the truth of such representations, he would not have acquiesced in the absorption.

KNUTE NELSON.

VIEWS OF MR. FORAKER.

I do not think it necessary for the committee to consider whether or not the transaction under investigation was a violation of the Sherman antitrust law.

On that point I express no opinion, except that in my judgment it more properly belongs to a court of competent jurisdiction in an appropriate proceed-

ing, with all the parties before it, to determine that question, than for this committee to pass upon it.

As I undersand the resolution of the Senate directing this proceeding, it involves two assumptions:

1. That the merger was a violation of the Sherman antitrust law; and

2. That the letter of the President to the Attorney General, dated November 4, 1907, was in effect an attempt to authorize the Attorney General to take no steps to enforce the law that was being violated.

These same assumptions were also involved in the conference between Messrs. Gary and Frick and the President, and in the action of the President in writing his letter of November 4, 1907, to the Attorney General. Unless the parties to that conference were of the impression that the transaction would be in violation of the statute, or at least that it might be so construed, there was no reason for such a conference, and all they did was without any intelligent purpose.

If they were correct in their impressions and assumptions, the only question remaining is that which the Senate directed this committee to answer, namely: Whether or not the President had authority to permit the merger.

If the law did not apply to the transaction there was no occasion for the President or any other official to be consulted or to give any expression on the subject, for manifestly he had no authority in the premises.

If, on the other hand, the law did apply, it is plain beyond the necessity of argument that the President had no power to suspend it, or to authorize or even permit its nonenforcement, for it is his duty to execute the law. This has been well settled ever since the Marbury case (1 Cranch 158).

Entertaining this view I am of the opinion that the question directed to this committee by the Senate, "whether the President was authorized to permit the absorption of the Tennessee Coal & Iron Co. by the United States Steel Corporation," should be answered in the negative.

J. B. FORAKER.

CHARTER OF UNITED STATES STEEL CORPORATION.

AMENDED CERTIFICATE OF INCORPORATION OF UNITED STATES STEEL CORPORATION.

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the act of the legislature of the State of New Jersey, entitled "An act concerning corporations (revision of 1896)," and the acts amendatory thereof and supplementary thereto, do hereby certify as follows:

I. The name of the corporation is United States Steel Corporation.

II. The location of its principal office in the State of New Jersey is at No. 51 Newark Street, in the city of Hoboken, county of Hudson. The name of the agent therein and in charge thereof, upon whom process against the corporation may be served, is Hudson Trust Co. Said office is to be the registered office of said corporation.

III. The objects for which the corporation is formed are:

To manufacture iron, steel, manganese, coke, copper, lumber, and other materials, and all or any articles consisting, or partly consisting, of iron, steel, copper, wood, or other materials, and all or any products thereof.

To acquire, own, lease, occupy, use, or develop any lands containing coal or iron, manganese, stone, or other ores, or oil, and any woodlands, or other lands for any purpose of the company.

To mine or otherwise to extract or remove coal, ores, stone, and other minerals, and timber from any lands owned, acquired, leased, or occupied by the company, or from any other lands.

To buy and sell, or otherwise to deal or to traffic in, iron, steel manganese, copper, stone, ores, coal, coke, wood, lumber, and other materials, and any of the products thereof, and any articles consisting, or partly consisting thereof.

To construct bridges, buildings, machinery, ships, boats, engines, cars, and other equipment, railroads, docks, slips, elevators, water works, gas works, and electric works, viaducts, aqueducts, canals and other waterways, and any other means of transportation, and to sell the same, or otherwise dispose thereof, or to maintain and operate the same, except that the company shall not maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease, or otherwise to acquire, and to hold, use, own, operate, and introduce, and to sell, assign, or otherwise to

dispose of, any trade-marks, trade names, patents, inventions, improvements, and processes used in connection with, or secured under letters patent of the United States, or elsewhere, or otherwise; and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade-marks, patents, licenses, processes, and the like, or any such property or rights.

To engage in any other manufacturing, mining, construction, or transportation business of any kind or character whatsoever, and to that end to acquire, hold, own, and dispose of any and all property, assets, stocks, bonds, and rights of any and every kind; but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey.

To acquire by purchase, subscription, or otherwise and to hold or to dispose of stocks, bonds, or any other obligations of any corporation formed for or then or theretofore engaged in or pursuing any one or more of the kinds of business, purposes, objects, or operations above indicated, or owning or holding any property of any kind herein mentioned; or of any corporation owning or holding the stocks or the obligations of any such corporation.

To hold for investment, or otherwise to use, sell, or dispose of any stock, bonds, or other obligations of any such other corporation; to aid in any manner any corporation whose stocks, bonds, or other obligations are held or are in any manner guaranteed by the company, and to do any other acts or things for the preservation, protection, improvement, or enhancement of the value of any such stock, bonds, or other obligations, or to do any acts or things designed for any such purpose; and while owner of any such stocks, bonds, or other obligations to exercise all the rights, powers, and privileges of ownership thereof, and to exercise any and all voting power thereon.

The business or purpose of the company is, from time to time, to do any one or more of the acts and things herein set forth; and it may conduct its business in other States and in the Territories and in foreign countries, and may have one office or more than one office, and keep the books of the company outside of the State of New Jersey, except as otherwise may be provided by law; and may hold, purchase, mortgage, and convey real and personal property either in or out of the State of New Jersey.

Without in any particular limiting any of the objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have power to issue bonds and other obligations in payment for property purchased or acquired by it, or for any other object in or about its business; to mortgage or pledge any stock, bonds, or other obligations, or any property which may be acquired by it to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends or bonds or contracts or other obligations; to make and perform contracts of any kind and description; and in carrying on its business, or for the purpose of attaining or furthering any of its objects, to do any and all other acts and things, and to exercise any and all powers which a copartnership or natural person could do and exercise and which now or hereafter may be authorized by law.

IV. The total authorized capital stock of the corporation is $1,100,000,000, divided into 11,000,000 shares of the par value of $100 each. Of such total authorized capital stock, 5,500,000 shares, amounting to $550,000,000, shall be preferred stock and 5,500,000 shares, amounting to $550,000,000, shall be common stock.

From time to time the preferred stock and the common stock may be increased according to law, and may be issued in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive when and as declared, from the surplus or net profits of the corporation, yearly dividends at the rate of 7 per cent per annum, and no more, payable quarterly on dates to be fixed by the by-laws. The dividends on the preferred stock shall be cumulative and shall be payable before any dividends on the common stock shall be paid or set apart; so that, if in any year dividends amounting to 7 per cent shall not have been paid thereon, the deficiency shall be payable before any dividends shall be paid upon or set apart for the common stock.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly installments for the current year shall have been declared, and the company shall have paid such cumulative dividends for previous years and such

accrued quarterly installments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the board of directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid in full both the par amount of their shares and the unpaid dividends accrued thereon before any amount shall be paid to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid and accrued dividends thereon the remaining assets and funds shall be divided and paid to the holders of the common stock, according to their respective shares.

V. The names and post-office addresses of the incorporators and the number of shares of stock for which severally and respectively we do hereby subscribe (the aggregate of our said subscriptions, being $3,000, is the amount of capital stock with which the corporation will commence business), are as follows:

Names.	Post-office address.	Number of shares.	
		Preferred stock.	Common stock.
Charles C. Cluff	51 Newark Street, Hoboken, N. J.	5	5
William J. Curtis	do	5	5
Charles MacVeagh	do	5	5

VI. The duration of the corporation shall be perpetual.

VII. The number of directors of the company shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year, the directors of the second class for a term of two years, and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of years, so that the term of office of one class of directors shall expire in each year.

The number of directors may be increased as may be provided in the by-laws. In case of any increase of the number of the directors the additional directors shall be elected, as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting; and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification, or other cause, the remaining directors, by affirmative vote of a majority of the board of directors, may elect a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The board of directors shall have power to hold their meetings outside of the State of New Jersey at such places as from time to time may be designated by the by-laws or by resolution of the board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the board of directors, which number may be less than a majority of the whole number of the directors.

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose at an annual meeting, the board of directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the act of the legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of the act concerning corporations (revision of 1896), any act which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time by the affirmative vote of a majority of the whole board of directors. Any other officer or employee of the company may be removed at any time by vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by vote of the board of directors.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint from the directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of the board of directors, including power to cause the seal of the corporation to be affixed to all papers that may require it.

The board of directors, by the affirmative vote of a majority of the whole board, may appoint any other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

The board of directors may appoint not only other officers of the company, but also one or more vice presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed, respectively, shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The board of directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the company, and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and, in its discretion, the board of directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations or shares of its own capital stock to such extent and in such manner and upon such terms as the board of directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the company's capital stock, as provided by law.

The board of directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation except as conferred by statute or authorized by the board of directors or by a reslution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, and from time to time may alter, amend, or repeal any by-laws; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

In witness whereof we have hereunto set our hands and seals the 23d day of February, 1901.

CHARLES C. CLUFF. [L. S.]
WILLIAM J. CURTIS. [L. S.]
CHARLES MACVEAGH. [L. S.]

Signed, sealed, and delivered in the presence of—
FRANCIS LYNDE STETSON.
VICTOR MORAWETZ.

STATE OF NEW JERSEY,
County of Hudson, ss:

Be it remembered that on this 23d day of February, 1901, before the undersigned personally appeared Charles C. Cluff, William J. Curtis, and Charles MacVeagh, who, I am satisfied, are the persons named in and who executed the

foregoing certificate; and I having first made known to them and to each of them the contents thereof, they did each acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed.

GEORGE HOLMES,
Master in Chancery of New Jersey.

[10-cent internal-revenue stamp canceled.]

Indorsed: Received in the Hudson County, N. J., clerk's office, February 25, A. D. 1901, and recorded in Clerk's Record No. ——, on page ——.

MAURICE J. STACK, *Clerk.*

Indorsed: Filed February 25, 1901.

GEORGE WURTS, *Secretary of State.*

(Indorsed: United States Steel Corporation. Amended certificate of incorporation filed in office of secretary of state Apr. 1, 1901.)

MERGER ILLEGAL.

[Views of Senators A. B. Kittredge, Lee A. Overman, Isidor Rayner, C. A. Culberson.]

Under the facts set out in this report, the absorption appears to have been contrary to the provisions of the antitrust law. Both companies, as we have said, were engaged in interstate commerce. They not only manufactured iron and steel, but sold, transported, and distributed their products among the several States of the United States. The transaction appears to be within the prohibition of the Federal statute. * * * Among other things, the effect and purpose of the purchase and absorption of the Tennessee company were to monopolize the iron-ore supply of the country for manufacture, sale, and distribution among the several States, and generally to eliminate the Tennessee company as a competitor in the manufacture, sale, and distribution of iron and steel products among the several States. * * *

[Views of Mr. Bacon.]

Under the facts narrated and the authorities cited in the foregoing report, it is my opinion that the absorption of the Tennessee Coal & Iron Co. by the United States Steel Corporation was in violation of the existing laws of the United States; and no officer of the United States has authority to countenance or to even negatively sanction such violation of law.

[Views of Mr. Nelson.]

In my opinion the absorption of the Tennessee Coal & Iron Co. by the United States Steel Corporation was clearly in violation of the antitrust law. I am further of the opinion that such absorption ought not to have been tolerated by the Government, but I believe the President was misled into taking the course he did take by the representations made to him that the absorption was necessary in order to stay and allay the financial panic then prevailing, and that but for his belief in the truth of such representations he would not have acquiesced in the absorption.

MANHATTAN, NEW YORK, *January 7, 1910.*

President TAFT.

YOUR EXCELLENCY: Some information, relevant to the United States Steel Corporation, it is the purpose of this letter to impart.

That corporation has never been engaged in manufacturing or in commerce. It is and always was an illegal combination of other corporations, all of which were, in the beginning and still are, engaged in manufacturing articles of iron and steel and in selling and transporting those articles in interstate commerce. The purpose which prompted the organization of the United States Steel Corporation and which has permeated its policy from the beginning, was simply to approach as nearly as possible to complete monopolization of the business of furnishing

iron and steel to the people of the United States, at prices as high as possible, in order to enable the members of the corporation to attain enormous wealth, in proportion to their respective shares of ownership of "securities," which were issued by the corporation to those parties who organized it. Those organizers included the corporations which were then and still are engaged in making and selling steel and iron, and included also Mr. J. P. Morgan and other persons who were not engaged in making or selling steel or iron, but who were mere "promoters," who invented the United States Steel Corporation, and induced those manufacturing and selling corporations to become parties to that illegal combination. Those "securities" comprised nearly $500,000,000 of bonds and about $400,000,000 of preferred stock and more than $500,000,000 common stock, and about $1,400,000,000 in all.

When the corporation was organized in 1901 those bonds and that stock were distributed among the manufacturing and selling corporations which I have mentioned (in consideration of the assignment to the United States Steel Corporation of nearly all the stock of those manufacturing and selling corporations) and among the "promoters" who invented and constructed the United States Steel Corporation. At that time the entire value of all the tangible property, and indeed the market value of all the bonds and stocks of the manufacturing and selling corporations which owned that tangible property, did not amount to nearly as much as the bonds and preferred stock of the United States Steel Corporation, and therefore much of the $400,000,000 of preferred stock and all of the $500,000,000 of common stock had nothing upon which to predicate any value, except the power of the illegal combination to extort excessive prices from purchasers of iron and steel, which excessive prices never had been extorted by the separate manufacturing and selling corporations, and could not be extorted by them when acting independently of each other, but which it was believed by Mr. Morgan and his coconspirators could be extorted by means of that combination. Enormous pecuniary success has resulted from the illegal combination, which the United States Steel Corporation undeniably constitutes and always has constituted. That corporation has made 33 quarterly statements from its organization to July 1, 1909. Its average total earnings per quarter during all that time were the enormous amount of $29,747,000. The charges which had to be paid out of that enormous sum comprised certain installments on certain sinking funds, and certain payments and allowances for special improvements and replacements and depreciation, and certain reserve funds, and the interest on all the bonds, and dividends at 7 per cent per annum on all the preferred stock. Those were the charges, and all the charges, which had to be paid out of the total earnings, except whatever was paid as dividends on the common stock. And all those charges ahead of the common stock averaged during the 33 quarters of years only $19,027,000. Thus the average amount of money which the United States Steel Corporation collected by virtue of excessive prices, and over and above all deductions which could possibly be excused, including interest paid on debts and including 7 per cent on all the preferred stock (much of which was water only), I say, that average amount of money was $10,720,000 for each of the 33 quarters, and was therefore at the rate of more than $40,000,000 per year.

The figures for the third quarter of 1909 are still more remarkable than the average figures for the thirty-three quarters from the organization of the company in 1901 to the end of June, 1909. For the total earnings for that quarter reached $38,200,000, of which only $22,000,000 had to be paid out otherwise than as dividends on the common stock. Thus the money which was extorted by means of the illegal combination from purchasers of iron and steel by the United States Steel Corporation during the third quarter of 1909 amounted to the enormous sum of $16,200,000, which was at the rate of $64,800,000 per annum.

Among my numerous activities I keep in touch with Wall Street and have talked with many financial gentlemen who are friendly to the United States Steel Corporation, relevant to its affairs, and I have told many such men that in my judgment that corporation was organized and has always been conducted in open arrogance and flagrant violation of the Sherman antitrust act. But not one of those men ever took issue with me on that point. Indeed nobody here, so far as I know, pretends to deny that the United States Steel Corporation was always and only a combination or a conspiracy in restraint of trade and commerce, including trade and commerce among all the States of the Union and with many foreign nations. One man who has owned, and perhaps still owns, more than 20,000 shares of the common stock of that corporation

when he heard me mention its illegality under the Sherman law rseponded with a cynical smile that he was taking his chances on that point, and he did not attempt to express or to imply any dissent from my statement.

Not to put too fine a point upon the matter, I think I ought to say to you that the idea I have collected from Wall Street is that you are not expected by any powerful party there, or even by any noteworthy member of lesser financial men, to "execute the office of President of the United States" in respect of taking care that one of the laws of the United States—namely, the Sherman law—shall be "faithfully executed" against the United States Steel Corporation. The nearly universal opinion seems to be that Mr. J. P. Morgan can do what he pleases in this country, and that having pleased to organize the United States Steel Corporation and to maintain it without interference during nearly nine years in the face of the Sherman law that violation of that law has now grown much too big to be suppressed.

It is also argued by some men that the United States Steel Corporation can not now be suppressed and dissolved without checking the reviving prosperity of the country. But I think that the reviving prosperity of the country, so far as it is affected favorably by the United States Steel Corporation, is like an automobile joy ride, which ought to be checked before it ends in disaster. Moreover, the dissolution of the United States Steel Corporation would not check, but would really promote, the prosperity of the country, by relegating the manufacture and sale of iron and steel to the separate corporations, which are making and selling steel now, which future manufacture and sale would simply be freed from illegality and would be made more beneficial to the people, and would remain sufficiently remunerative to the separated independent and legitimately competing corporations which would then be conducting it.

I have written this letter to Your Excellency in plain terms, because I believe you are entitled to receive the information I am conveying, and because I know you would rather read the naked truth than to bother with interpreting ambiguous phrases. It was always the peculiar misfortune of chief magistrates of great nations to be kept partly uninformed of important facts which are well known to many other men. This misfortune has partly arisen from fear of giving offense in high quarters by plain statements. But I am not afraid of giving you any offense, because I know, and you will believe, that my motives are such as spring from warm and entirely disinterested friendship.

I am, very respectfully, yours,

ALBERT H. WALKER.

AMERICAN TOBACCO CO.

The case made by the Government is a distinct disappointment. Every phase of the American Tobacco Co.'s business is so manifestly illegal and in such absolute violation of the Sherman Antitrust Act in both letter and spirit that I am of the opinion that the Supreme Court should decide in favor of the Government. It is nevertheless true that the best case has not been made.

In his argument for the tobacco company Delancey Nicoll reiterated with every emphasis and in a dozen different ways that the American Tobacco Co. had never attempted to lower the price of tobacco in the hands of the grower, the one man the Government wished to protect. Mr. Nicoll even went further and defied the Attorney General to show any such instance in the record. The Justices of the Supreme Court, one after another, inquired if there was not some evidence to show that the producer of tobacco had been injured or affected by this combination. Chief Justice White even went so far as to say that instances of this kind, whether true or false, had come to his knowledge, and in fact, had been called to his attention by the tobacco growers of Louisiana.

It is as astonishing as it is disheartening that the Attorney General replied that he had no evidence in the record of any such an offense having been committed by the tobacco company.

The Attorney General must have known that the evidence of the American Tobacco Co.'s manipulation of prices and confiscation of the tobacco growers' property is manifest. If from no other source it could have been obtained by him in the records of Congress, proceedings on the floor and hearings in committees. Beginning in 1904, when R. E. Cooper, one of the most extensive tobacco growers in the South, stated that he (the trust buyer) will tell me

that he will give me 3½ or 4 cents a pound for my tobacco. I have nobody else to sell it to and have to accept that price.

The records have teemed with such testimony. Dozens of witnesses have been called to the House and gave this information, and everyone knows that this condition forced the formation of various tobacco societies. Certain acts of lawlessness were afterwards committed and attributed to these organizations. The whole matter was brought to the attention of the country in a sensational manner. The newspapers and magazines were full of it.

The most inexplicable part of it all is that the Attorney General is thoroughly cognizant of the existence of these organizations, has intimated in written communications that he contemplated proceedings against them, and growers have more than once been brought before the Federal courts. The Attorney General, in discussing the subsequent raise in the price of tobacco, said he attributed it to the tobacco organizations. How he could discover these organizations without surmising the cause of their existence is puzzling when you consider that Mr. Wickersham is a great lawyer and an accurate reasoner. Nearly all of these witnesses are alive and could have been called by the Attorney General had he desired to do so.

It is a matter of profound regret that the facts, easily obtained and established—the corporation would hardly have attempted to deny them—should have escaped the attention of the Government, thus allowing the American Tobacco Co., so far as the record is concerned, to go before the Supreme Court absolutely uncharged with the worst offense it committed. It reminds me of the incident in the western town, where, after killing his man, the accused failed to make any provision for the care of the body, and was indicted for discharging firearms within the town limits and also for obstructing the public highway. The murder was not mentioned.

I believe that if the Government's case had been managed by Assistant Attorney General J. C. McReynolds the evidence would have been brought out.

INTENT TO FORM A MONOPOLY.

Prof. Wilgus, professor of law in the University of Michigan, has written a very careful history of the organization and operation of the United States Steel Corporation.

In discussing the legality of the trust, he proceeds as follows:

3. Is it an illegal trust?

This depends upon two things. (1) Its substance and (2) its form.

(1) *As to substance.*—A recent definition of a trust is "any combination, whether of producers or venders of a commodity, for the purpose of controlling prices and suppressing competition. All contracts, agreements, and schemes whereby those who are competitors combine to regulate prices, are "trusts." A somewhat fuller definition is the one given by Mr. S. C. T. Dodd, the attorney for the Standard Oil Co. (and if anybody ought to know from experience, he should). He says it "embraces every act, agreement, or combination of persons or capital believed to be done, made, or formed with the intent, effect, power, or tendency to monopolize business, restrain or interfere with competitive trade, or to fix, influence, or increase the price of commodities." It will be noted that neither of these definitions says anything as to form. So far as the form is concerned, that is immaterial. It is the purpose and tendency that is emphasized. It is not necessary that prices be actually increased, or that competition, in fact, is prevented. It is the purpose and the power that are the essential elements. "The test is whether the contract or combination in its apparent purpose and natural consequence places such restriction upon competition as tends to create a monopoly." From the review we have taken of the industrial side of the United States Steel Corporation, and waiving all questions of form, it is reasonably certain that it is a combination made with the intent, effect, power, and tendency to restrain competition in the iron and steel business.

(2) *Form.*—(*a*) In general: Does the form of organization—the corporate form—prevent it from being illegal? As we have just said, the form is not

made part of the approved definitions, and by the decisions of many of the courts it is held that the form will be looked through and the substance considered. And although the form is corporate, and apparently legal, that this will not purge the illegality of the purpose. In Illinois, where corporations can be formed for any lawful purpose, it was held that a gas company, formed for manufacturing gas and acquiring the shares and property of other gas companies, was illegal when the shares were acquired for the purpose of controlling these other companies in order to prevent competition and create a monopoly in the business—and this, too, when the express power to acquire such shares was contained in the articles of incorporation. Substantially the same view has been taken in several of the States, and by the Supreme Court of the United States, which says "it is not within the general powers of a corporation to purchase the stock of corporations for the purpose of controlling their management, unless express permission be given so to do."

And again:

How, then, did it happen that the Standard Oil Trust was unlawful, when every single step taken in its formation was legal? The reason was clear—that the purpose was to form a monopoly and suppress competition; that the trustees understood this, and that the shareholders did also, and that it was the same as any other contract for creating a monopoly; that is, unenforceable. But no statute then provided for punishing either the shareholders or the trustees. Can the courts come to any other conclusion as to the United States Steel Corporation? It understands why it was formed—for the purpose of preventing competition. Those who sold their shares to it understood this also—they knew it was for the same purpose. There are therefore no innocent parties here any more than in the other case, and if either party was here any more than in the other case, and if either party was trying to enforce this contract for the purchase of shares, the courts certainly would be bound to hold them unenforceable if the question was properly raised.

ROOSEVELT'S LETTER.

THE WHITE HOUSE,
Washington, November 4, 1909.

MY DEAR MR. ATTORNEY GENERAL: Judge E. H. Gary and Mr. H. C. Frick, on behalf of the Steel Corporation, have just called upon me. They state that there is a certain business firm (the name of which I have not been told, but which is of real importance in New York business circles) which will undoubtedly fail this week if help is not given. Among its assets are a majority of the securities of the Tennessee Coal Co. Application has been urgently made to the Steel Corporation to purchase this stock as the only means of avoiding a failure. Judge Gary and Mr. Frick inform me that as a mere business transaction they do not care to purchase the stock; that under ordinary circumstances they would not consider purchasing the stock, because but little benefit will come to the Steel Corporation from the purchase; that they are aware that the purchase will be used as a handle for attack upon them on the ground that they are striving to secure a monopoly of the business and prevent competition—not that this would represent what could honestly be said, but what might recklessly and untruthfully be said. * * *

But they feel that it is immensely to their interest, as to the interest of every responsible business man, to try to prevent a panic and general industrial smash-up at this time, and that they are willing to go into this transaction, which they would not otherwise go into, because it seems the opinion of those best fitted to express judgment in New York that it will be an important factor in preventing a break that might be ruinous; and that this has been urged upon them by the combination of the most responsible bankers in New York, who are now thus engaged in endeavoring to save the situation. But they asserted they did not wish to do this if I stated that it ought not to be done. I answered that, while of course I could not advise them to take the action proposed, I felt it no public duty of mine to interpose any objection.

Sincerely, yours, THEODORE ROOSEVELT.

Hon. CHARLES J. BONAPARTE,
Attorney General.

"LIVE AND LET LIVE."

[Editorial, Philadelphia Record, March 23, 1910.]

For extreme cockloftiness, a late interview of Judge Gary, speaking for the Steel Trust, furnished a fine sample. Nothing better in that line has been done since, in conscious almightiness, one of the French Kings declared "I am the State." Premising with the declaration that the United States Steel Corporation is unassailable, because its organization and operations are absolutely open and aboveboard and devoid of illegality, he adds:

"We were investigated by Mr. Wickersham and by his predecessor. They were unable to find anything on which to base an action, which is fortunate for the country, as well as for ourselves. The disintegration of this company would have meant commercial havoc and financial chaos. Trade would have been paralyzed. The United States might have well have been out of business had the United States Steel Corporation been put out of business. It is not a question of our seventy-odd thousand shareholders, or our 200,000 employees. They are relatively minor considerations. The question is national. It affects every railroad, every builder, every citizen indeed.

"The fact is that every railroad, every builder, every citizen is deeply interested in getting iron and steel at fairer prices. Iron and steel, next to bread and meat, are articles of the first necessity. The prices should be so reduced that the earnings of the Steel Trust and the profits of the Steel Trust may be kept within reasonable compass. The rule of live and let live should be enforced. The tariff taxes on imports of iron ore and upon iron and steel would be repealed. This would give every railroad, every builder, every citizen a chance to live and do business without first paying the Steel Trust a consideration for the privilege."

THE REAL VALUE OF THE TENNESSEE COAL & IRON CO.

[Extracts from the Forty-seventh Annual Report of the Tennessee Coal & Iron Co.]

The physical condition of your mills during the past year (steel works and rolling mills) has been improved by liberal expenditures (p. 28).

While a general rehabilitation of old equipment has been taken care of by liberal maintenance, your executive committee have realized the necessity of increased steel and rail capacity and have authorized the construction of a modern steel works and rail mill. These extensive improvements are expected to double your steel and rail capacity [capitals and italics in text] and radically reduce your cost of production. The benefits expected from these additions to plant will not be operative until the last half of 1907 (p. 28).

The same policy as applied to your steel works and rolling mills, in respect to betterments and maintenance, has also been applied to building up your blast-furnace department (p. 29).

These extensions (iron mines and quarries) are all under way and substantially increased production will be realized during the year 1907 (p. 30).

Unfilled orders.—The unfilled orders now on your books represent the largest tonnage in the history of your company. The business is well distributed and indicates broadening markets for all products. This is particularly true of coal and coke. The prospects for the future, as suggested by business on hand, shows no sign of business recession, and the outlook for the year 1907 is most encouraging (p. 37).

Memorandum of unfilled orders as of January 1, 1907.

[P. 37.]

	Tons.
Manufactured iron and steel products	467,114
Coal	1,200,000
Coke	201,000

Comparative production.

	Tons.
Rails, billets, steel bars, and plates (p. 28):	
For 1904	155,266
For 1905	402,318
For 1906	401,882
For 1907 (p. 27, United States Steel Corporation, Sixth Annual Report)	477,624
Pig iron (p. 29):	
For 1904	475,314
For 1905	529,036
For 1906	641,887
For 1907 (p. 27, United States Steel Corporation, Sixth Annual Report)	602,827
Iron ore (p. 30):	
For 1904	1,208,038
For 1905	1,436,282
For 1906	1,483,476
For 1907 (p. 27, United States Steel Corporation, Sixth Annual Report)	1,576,757

Potential capacity.—The knowledge that your executive committee has acquired as to the tonnage and character of the iron ore, coal, and limestone owned in fee simple by your company, satisfies them that in wealth of raw materials required for the manufacture of iron and steel your company ranks as second to only one in the world, and is far in advance of any other iron or steel producer in cost of assembling its raw materials for manufacture (p. 32).

The mineral reserves of coal and iron contained in your lands, as computed by competent authorities, are estimated to be 700,000,000 tons of iron from ore and 2,000,000,000 tons of coal. Approximately one-half of your coal supply is of a superior coking quality and your iron ore is largely of a self-fluxing character, analyzing approximately 38 per cent metallic iron. This ore is well suited to the manufacture of high-grade foundry pig and to the production of basic pig iron for use in the manufacture of basic open-hearth steel (p. 32).

The financial statement shows your company to be in a sound financial condition with current assets of $3,004,480.09 in excess of your current liabilities (p. 9).

VALUE OF TENNESSEE COAL AND IRON.

Grant B. Schley also testified that the acquisition of the Tennessee Co. "added materially to the value of the steel (corporation) securities" (Hearings, p. 73), and that in 1907, E. H. Harriman, or the Harriman railway lines, gave a large order to the Tennessee Co. for steel rails on account of a preference for rails of the open-hearth process of that company over rails of the Bessemer process of the Steel Corporation. (Hearings, p. 68.)

The order by the Harriman lines was for 100,000 tons of rails, about the same as the order given in the summer of 1907 by President Cassatt, of the Pennsylvania Railway Co., who placed an order with the Tennessee Coal & Iron Co. for over 100,000 tons of rail, this showing that the Tennessee Coal & Iron Co. to be superior in their material to that used by the Steel Trust. (Senate Document 1064.)

INTENT TO FORM A MONOPOLY.

While all monopolistic intentions are disclaimed by the officials of this consolidation, it has already been seen that the combination was formed to avert a threatened competition which would have lessened profits in the prosperous period which was coming and would have proven destructive to several of the companies in a time of depression. The aim, therefore, of the new organization was, in a measure at least, the control of the industry.

INTENT TO CONTROL ALL MATERIAL.

As has already been noted, however, the Steel Corporation has during the six years of its history been increasing its holdings of ore lands through which it may in time control the industry by controlling the sources of raw material. This achievement will be difficult, but the best situated and most productive fields are now for the most part held by the corporation. It is principally upon the possession of these lands that the Steel Corporation justifies its huge capitalization.

DIRECTORS NOT STEEL MEN.

It is significant of the general policy of the Steel Corporation that the ruling power is financial. The leading executive body is the finance committee; and the president, who is at the head of the industrial side of the organization, is subordinate in managerial power to the chairman of the board and the chairman of the finance committee. The board of directors, too, is composed mainly of financiers. When the corporation was first organized only about one-third of the board were acquainted with the steel language. The banking interests were represented by J. P. Morgan, George C. Perkins, and Robert Bacon; the Standard Oil, by the Rockefellers and H. H. Rogers. The Steel Corporation, therefore, has been at least as much a financial as a manufacturing organization.

THE HILL DEAL RENDERED THE ACQUISITION OF THE TENNESSEE IRON & COAL CO. NECESSARY.

The Hill deal, says the Iron Age, suggested to men of large capital that the psychological moment had arrived for investment in Alabama ore and coal, and in the plants already existing to turn them into steel. (Iron Age, Nov. 22, 1906, pp. 1388, 1389.)

The Steel Corporation has an advantage over independent companies in possessing deposits of ore which will probably long outlast theirs. It dominates the northern ore region, but its large possessions here do not enable it to control the country's output. In order to secure such a control the corporation would, in addition to its present holdings in the Lake Superior district, have to gain possession of the Alabama region.

Rumors are not wanting that appraisals of the value of important iron and steel companies have been made, with the view to an ultimate merger with the Steel Corporation. (The Times, New York, Mar. 6, 1906.)

Companies in possession of important ore fields would be natural subjects of such appraisal. Were such organizations as the Republic Iron & Steel Co., the Colorado Iron & Fuel Co., the Tennessee Coal, Iron & Railroad Co., the Southern Steel Co., and the Sloss-Sheffield Co. to be merged with the Steel Corporation on the basis of their present capitalization, something like $200,000,000 would be added to the stocks and bonds of the corporation. A merger of this kind would by no means be so great as that which took place when the Steel Corporation itself was organized, and it would give the organization practically a control of the iron and steel trade of the country. Under such combination the output of ore from Lake Superior, Alabama, Colorado, and Utah would be regulated by one organization.

THE UNITED STATES STEEL CORPORATION HAS MONOPOLY OF BESSEMER ORE.

It has already been observed that for much of the production of this district a high royalty must be paid. In the case of the Great Northern properties recently transferred to the corporation this royalty for standard ore (59 per cent iron contents) delivered at the shipping port on Lake Superior will be, as we have seen, $1.65 per ton in 1907 (85 cents royalty plus 80 cents haulage) with an increase each year of 3.4 cents, which royalty is to apply to a minimum tonnage increasing each year until 1917, when the annual production is to be

at least 8,250,000 tons. The price by the Carnegie Co. for its ore holdings before the Steel Corporation was organized ranged from 15 to 35 cents per ton for standard grade. It will thus be seen that high-grade ore is commanding a much higher royalty now than in the closing years of the last century.

The whole transaction seems to have been based on the belief that the bulk of the iron ore in the United States that can be carried at reasonable freight rates to advantageous assembling points for fuel and ore is known to-day, and that if other ore deposits are found they will be at such distances from the chief steel-making and steel-consuming sections of the country as not to compete on equal terms with the lake ores. It seems to be based also on the conviction that the demand for iron and steel will continue to increase, and consequently the high price paid for the late additions to the corporation's holdings is reasonable, if not low, compared with future values.

That the demand for iron and steel is pressing hard upon the ore supply of the country seems to be indicated by the general trend of prices during the last six or eight years. In the spring of 1900 old range Bessemer ore sold as low as $2.75 per ton at furnace. This price was lower than for 1899, when all iron and steel goods sold at unusually high figures. It was not, however, considered very low. Four years later the old range Bessemer ore was priced at $3.25 per ton, which was considered almost ruinous; in the fall of 1906 it was $5.15. Non-Bessemer Mesaba ore, which sold for $2.75 per ton at furnace in 1901, sold at the later date for $4.10. These prices indicate that there has been a marking up of ore values during recent years. The high price paid by the steel corporation for the Hill holdings is but a recognition of the general trend of values.

The Steel Corporation is thus in possession of large areas of ore land which are steadily increasing in value. It is furthermore in control of the district from which nearly all the Bessemer ore of the United States comes, and may therefore be said to virtually control the output of this material. It is well known that the Bessemer ore is getting scarcer the world over. The Bilbao district of Spain, which has supplied Europe with a large proportion of this material, will, according to all accounts, soon be exhausted. The large ore fields of Asturias, which are not yet fully opened up, will not produce ores suitable for the acid Bessemer process. The Bessemer ore of Lake Superior is not likely therefore to experience much foreign competition. In this country Bessemer ore still commands a higher price than the non-Bessemer product. As long as this is the case the control of the Lake Superior region will give the Steel Corporation a marked advantage over its competitors.

REAL VALUE OF TENNESSEE COAL & IRON CO.

Comparative statement of income of the Tennessee Coal, Iron & Railroad Co.

Gross profits:	
For 1904	$1,862,131.21
For 1905	2,484,139.26
For 1906	2,753,159.85
For 1907 (p. 27, U. S. S. C. Rept.)	2,749,903.73
Gross sales and earnings (p. 19):	
For 1904	9,607,578.74
For 1905	10,951,979.02
For 1906	13,265,970.66
New construction and development of land:	
For 1906	1,355,632.28
For 1907 (p. 27, U. S. S. C., 6th Ann. Rept.)	6,589,116.99

In this connection note that the total cost of the plants of the Tennessee company, excluding land, was on the date of this report (p. 21) $11,211,872.30, and that of the $6,589,116.99 expended for new construction in 1907 only about $72,000 was expended for land, leaving the balance of over $6,500,000 expended for enlargement of its manufacturing capacity, or an increase of about 60 per cent.

Mr. John Moody, in an article in Moody's Magazine for January, 1909, said: "But the most fortunate business stroke of the Steel Corporation, from the viewpoint of its owners, since its organization in 1901 was the acquisition last year of the Tennessee Coal, Iron and Railroad property. The acquisition of this organization has added great potential value to the steel organization and has increased the tangible equity of its common-stock issue to a far greater extent than is commonly realized. The Tennessee Coal and Iron properties embrace, besides important manufacturing plants, nearly 450,000 acres of mineral lands in the Birmingham section of Alabama. As shown in the report of the Tennessee company in 1904, when an appraisal was made by outside parties, these lands contain, approximately, 400,000,000 tons of first-class low-grade ore and more than 1,200,000,000 tons of coal, of which about one-half is coking coal. This estimate indicates that the deposits embraced are even in excess of those of the great Lake Superior properties controlled by the corporation, including the great northern ore bodies. This entire property was acquired, as is well known, on very favorable terms for the Steel Corporation, and of course puts it in a position where now it need have no concern regarding a possible future shortage of supply of either iron ore, coal, or coke. Added to this is the fact that the deposits are more favorably located than those of the Lake Superior district, and will enable the company to carry on in the years to come a vast economic development of production which is better for the making of ordinary pig iron than that of any other known deposits in this country."

CITATIONS.

Addystone Pipe Co. *v.* United States (175 U. S., 211); Northern Securities Co. *v.* United States (193 U. S., 197); Swift *v.* United States (196 U. S., 375); Loewe *v.* Lawler (208 U. S., 274); Pennsylvania Sugar Refining Co. *v.* American Sugar Refining Co., circuit court of appeals, second circuit (Dec. 15, 1908); United States *v.* American Tobacco Co. (S. Doc. 646, 60th Cong., 2d sess.); Continental Wall Paper Co. *v.* Voight (Sup. Ct. U. S., Feb. 1, 1909).